

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-7088

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 77 - 7088

RICHARD J. STULL,

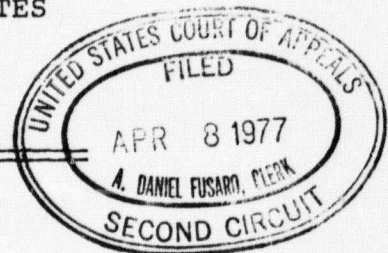
Plaintiff-Appellant,

v.

NICHOLAS H. BAYARD, PAUL L. MILLER, HOWARD PIPER,
THOMAS F. PIPER and WILLIAM T. PIPER, JR.,
individually and as EXECUTORS OF THE ESTATE OF
WILLIAM T. PIPER, Deceased, NICOLAS M. SALGO,
DAVID W. WALLACE, BANGOR PUNTA CORPORATION and
THE FIRST BOSTON CORPORATION,

Defendants-Appellees.

APPEAL FROM ORDER OF UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK



APPENDIX

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DOCKET ENTRIES

DATE

Aug. 1-75 Filed complaint and issued summons

Aug. 18-75 Filed summons and return-served the following:
The First Boston Corp. by R. Kohlbrecher
on 03-05-75
Howard Piper-UNEXECUTED -08-11-75
Thomas F. Piper-UNEXECUTED -08-11-75
William T. Piper, Jr. on 08-11-75
Piper Aircraft Corp. by John R. Leeson on
08-11-75
Bangor Punta Corp. by John Martin on 08-08-75

Aug. 27-75 Mailed notice of reassignment to Judge Wyatt.

Sep. 8-75 Filed Stip. & Order that the time for defts,
The First Boston Corp., Bangor Punta Corp.,
William T. Piper Jr. & Piper Aircraft Corp.
to answer is extended to 9-15-75, Motley, J.

Sep. 12-75 Filed plttf's affidavit & notice of motion
for an order determining that this action
to be a class action & granting partial
summary judgment other than Piper Aircraft
Corp., ret. Sep. 26, 1975

Sep. 12-75 Filed plttf's memorandum of law in support
of his motion

DOCKET ENTRIES

Sep 16-75 Filed Stip & Order that the time for
defendants The First Boston Corp.,
Bangor Punta Corp., William T. Piper
Jr. & Piper Aircraft Corp. to answer
to complaint is extended to 9-30-75, Pollack, J.

Sep.26-75 Filed Memo. End. on Document #4. The within motion
is denied without prejudice to its
renewal after completion of discovery.
Wyatt, J. (mailed notice)

Sep.26-75 Filed Memo End. on Unsigned Stipulation.
This Stip is disapproved. The motion
is denied without prejudice to the renewal
after completion of discovery Wyatt, J.
(mailed notice)

Oct.1-75 Filed (ANSWER) (Piper Aircraft Corp.)

Oct.1-75 Filed ANSWER (The First Boston Corp)

Oct.2-75 Filed ANSWER (William T. Piper Jr.)

Oct.14-75 Filed Deft. William T. Piper Notice of
Deposition of plttf. on 10-17-75

Oct.14-75 Filed AMENDED ANSWER (Piper Aircraft Corp)

Oct.31-75 Filed Pltffs. First Set of Interrogs. addressed
to defts. First Boston Corp.,
& Bangor Punta Corp.

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DOCKET ENTRIES

DATE	
Oct. 31-75	Filed Pltffs. First Set of Interrogs. to deft. William T. Pipper, Jr.
Oct. 31-75	Filed Pltffs. First Set of Interrogs. to deft. Piper Aircraft Corp.
Nov.26-75	Filed Deft. Bangor Punta's Objections to pltffs. 1st Set of Interrogs.
Dec.1-75	Filed Deft. Piper Aircraft Corp.'s Objections to pltffs. 1st Set of Interrogs.
Dec.5-75	Filed Objections of Deft. William T. Piper,Jr. to Pltffs. 1st set of Interrogs.
Dec.9-75	Filed Additional summons with Marshal's return. SERVED HOWARD PIPER 12-3-75
Dec.18-75	Filed pltffs. Affidavit & Notice of Motion for an order to answer pltffs' First Set of Interrogs.,etc., rtble before Wyatt,J. on 1-9-76
Dec.22-75	Filed ANSWER of deft. Thomas F. Piper to the complaint
Jan.5-76	Filed summons with marshal's return SERVED: THOMAS F. PIPER on 12-4-75
Jan.22-76	Filed Affidavit of deft. Piper Aircraft Corp. in opposition to pltffs. motion,etc. as indicated
Jan.22-76	Filed Affidavit of defts. Bangor Punta Corp. David W. Wallace and Nicholas M. Salgo in opposition to pltffs' motion etc. as indicated

DATE

Jan.22-76	Filed memorandum of deft. Piper in opposition to motion to compel answers to pltffs. interrogatories
Feb.13-76	Filed stip and order that the time of deft. The First Boston Corp. to respond, etc. is extended to the 20th day following the ruling of Mag. Schreiber, etc.as indicated
Feb.13-76	Filed ANSWER of deft. H. Piper to the complaint
Mar.9-76	Filed Pltffs. First Request for production and inspection of documents.
Mar.9-76	Filed Request by Defts. named that Pltff. produce documents, as indicated
Mar.9-76	Filed request of deft. The First Boston Corp. to inspect pltffs.documents listed on Schedule A attached.
Mar.15-76	Filed Stip.Order & Judgment dismissing the complaint as to Deft. (Piper Aircraft Corporation) with prejudice...Wyatt, J. Judgment entered 3-16-76...Clerk.
Mar.15-76	Filed Deft's. (Piper Aircraft) affidavit in support of Stip. of dismissal
Mar.22-76	Filed pltffs! response to defts. Bangor Punta Corp. Nicholas M. Salgo and David W. Wallace's request for production of documents etc. as indicated

DOCKET ENTRIES

DATE	
Mar. 24-76	Filed Notice of Entry by deft. Piper Aircraft Corp. as indicated.
Mar. 25-76	Filed response of defts. named to plffs. first request for production of documents
Apr. 30-76	Filed Affidavit of deft. William T. Piper, et al. in opposition to plffs. motion etc., as indicated
May 26-76	PRE-TRIAL CONFERENCE HELD BY Schreiber
Aug. 24-76	Filed plffs. Affidavit & Notice of Motion for an order determining this action to be a class action, etc. as indicated rtble on 9-27-76
Aug. 24-76	Filed plffs. memorandum of law in support of said motion
Sep. 17-76	Filed Stip & order that the time of defts. to file a response to plffs. motion for class action certification etc. is adjourned to 10-29-76 etc. as indicated, Wyatt, Jr.
Nov. 8-76	Filed Stip & Order that the time of defts. to file a response to plffs. motion for class action, etc., is extended to 11-30-76 and the return date on plffs. motions is extended to 12-17-76, Wyatt, Jr.

DOCKET ENTRIES

DATE

Nov.30-76 Filed Affidvt. & Notice of Motion by defts. named that this Court enter a summary judgment in favor of defts. in dismissing the action etc.rtble on 11-30-76

Nov.30-76 Filed defts. memorandum of law in support of said motion as indicated

Nov.30-76 Filed Affidavit & Notice of Cross-Motion by defts. named for summary judgment against pltff. etc. rtble on 12-17-76

Nov.30-76 Filed memorandum of defts. named in support of said motion as indicated

Dec.1-76 Filed Notice of Motion by deft. First Boston Corp. for an order striking the pltffs. complaint, etc. as indicated rtble on 12-17-76

Dec.1-76 Filed First Boston's Brief in support of its cross motion etc. as indicated

Dec.2-76 Filed Rule 9G Statement of the First Boston Corporation as indicated.

Jan.10-77 Filed opinion #45507...this is a motion by pltff. or an order determining that this action be maintained as a class action and granting partial summary judgment in favor of pltff.etc.There are

DOCKET ENTRIES

DATE

Jan.10-77 (contd)

three cross-motions...for

summary judgment in favor of
 defts. Because I find that the
 action is barred by the statute of
 limitations the other grounds
 asserted by movants are not reached...
 The several cross-motions by defts.
 are granted. The motion by plttf
 is denied as moot. Settle order.

Wyatt, J. m/n

Jan.10-77

Filed plttfs memo in opposition to defts.
 motion on the issue of statute
 of limitations.

Jan.10-77

Filed opposing affidavit of R. Stull.

Jan.19-77

Filed order and judgment..that defts cross-
 motions for summary judgment
 are granted, that plttfs' motion
 for certification as a class action
 is denied as moot....that plttfs'
 complaint be dismissed on the merits
 with prejudice and defts recover
 their costs. Wyatt J. Judgment ent.
 Clerk 1-20-77 (on docket 1-21-77) mn

DOCKET ENTRIES

DATE

Feb.16-77	Filed Appeals bond in the sum of \$250.00 Hartford Accident & Indemnity Co.
Feb.16-77	Filed pltffs.notice of appeal to 2nd Circuit from the judgment and order entered on 1/9/77. Mailed copies

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD J. STULL,

Plaintiff,

-against-

NICHOLAS H. BAYARD, PAUL L. MILLER,
HOWARD PIPER, THOMAS F. PIPER and
WILLIAM T. PIPER, JR., individually
and as EXECUTORS OF THE ESTATE OF
WILLIAM T. PIPER, deceased,
NICOLAS M. SALGO, DAVID W. WALLACE,
BANGOR PUNTA CORPORATION, THE
FIRST BOSTON CORPORATION, and
PIPER AIRCRAFT CORPORATION,

Defendants.

COMPLAINT

CLASS ACTION

PLAINTIFF DEMANDS A
TRIAL BY JURY

-----X

Plaintiff, complaining of the defendants, by
DEMOV, MORRIS, LEVIN & SHEIN, his attorneys, alleges:

JURISDICTION

1. The jurisdiction of this Court is founded
upon Section 27 of the Securities Exchange Act of 1934 (the

COMPLAINT

"Exchange Act") (15 USC 78aa), and the principles of pendent jurisdiction. This action is brought to enforce defendants' liability, created by Section 14(d)(1), et seq. and (e) of the Exchange Act (15 USC 78n (5)(1), et seq. and (e)) and the Rules of the Securities & Exchange Commission ("SEC") applicable thereto. The acts and practices complained of occurred in part in the Southern District of New York.

2. This action is not a collusive one to confer upon a Court of the United States jurisdiction of an action of which it would not otherwise have jurisdiction.

CLASS ACTION ALLEGATIONS

3. Pursuant to Rule 11A of the Civil Rules of this Court and Rule 23 of the Federal Rules of Civil Procedure, plaintiff alleges:

(a) This action is properly maintainable as a class action within Rule 23(a), and (b) subdivision (1) (A) and (B) and (3) of the Federal Rules of Civil Procedure.

(b) (i) The number of members of the class is not presently known, but it is believed that the number exceeds

All

COMPLAINT

300 members.

(ii) The class comprises the public shareholder of Piper Aircraft Corporation ("Piper") who owned or held the shares of Piper on or about and prior to August 4, 1969 and were induced, dissuaded or deprived by or as a result of fraudulent, deceptive or manipulative acts or practices of the defendants of and from accepting a tender and exchange offer made by Chris-Craft Industries, Inc. ("CCI"), on or about May 19, 1969, of a package of CCI's securities, plus \$10 in cash, as amended, for each Piper share tendered.

(iii) The basis upon which it is claimed that plaintiff will fairly and adequately protect the interests of the class is that plaintiff was induced not to accept and dissuaded from accepting CCI's tender and exchange offer prior to the date of its expiration, by the acts and practices complained of and he was thereby deprived of the same; that he has no interests adverse to the class; that he is not associated in any way, shape or form with any of the defendants; that his

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COMPLAINT

attorneys are experienced in this type of litigation and will diligently prosecute this action on behalf of plaintiff and the class he represents; and plaintiff's attorneys have no interests adverse to the claims of Piper shareholders.

(iv) The following questions of law and fact are common to the class:

(1) Whether defendants in their efforts to defeat CCI's tender and exchange offers to Piper stockholders for their Piper shares and to deprive, induce, dissuade or prevent the plaintiff and other stockholders of Piper similarly situated of and from accepting the same, made false, deceptive or misleading statements or material omissions in a registration statement, prospectus, public press releases, letters to Piper stockholders, or other writings publicly filed or disseminated in the mails and other instrumentalities of interstate commerce, among other things alleging that CCI's tender and exchange offers were inadequate, and engaged in other illegal acts and practices for that purpose.

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COMPLAINT

(2) Whether such acts and practices constituted violations of the Exchange Act and the Rules and Regulations applicable thereto.

(3) Whether plaintiff and other stockholders of Piper, similarly situated were damaged as a result of the wrongful acts and material omissions of the defendants complained of.

(v) Prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class and establish incompatible standards of conduct for the parties opposing the class. An adjudication of plaintiff's claims would as a practical matter be dispositive of the interests of other Piper stockholders not parties to such adjudication. There is no interest in members of the class in individually controlling the prosecution of separate actions known to plaintiff and more than five years have elapsed since defendants' violations of the Exchange Act complained of. No other litigation concerning the controversy

COMPLAINT

has been commenced by or against members of the class, except that a prior private suit by CCI against the defendants, or some of them, resulted in a final judgment in favor of CCI; and another action concerning the controversy was commenced by Lillian Stull against the defendants, or some of them, has been settled as a private action, as plaintiff is informed. It is claimed that the questions of law and fact common to the members of the class predominate over any questions affecting only individual members and that class relief is superior to other forms of relief. Plaintiff knows of no difficulties likely to be encountered in the management of the action as a class action.

CAUSE OF ACTION

4. Plaintiff is and prior to August 4, 1969 was a stockholder of Piper, owning and holding 75 of its shares, 50 shares of which he purchased on the New York Stock Exchange ("NYSE") and 25 shares of which he received as a stock dividend.

5. Piper is a Pennsylvania corporation. On or

COMPLAINT

about and prior to August 4, 1969, Piper was one of the nation's leading manufacturers of light aircraft. Its 1,644,890 shares of issued and outstanding stock were traded on the NYSE. The individual Piper defendants and William T. Piper, deceased (referred to herein as the "Piper family") were Chief Executive Officers and Directors and in control of Piper and they owned or controlled about 325,000 Piper shares.

6. Upon information and belief, that William T. Piper died subsequent to the acts and practices of the defendants complained of and that Howard Piper, Thomas F. Piper and William T. Piper, Jr. are the Executors of said decedent's estate.

7. Bangor Punta Corporation ("BPC") is and on or about and prior to August 4, 1969 was a Delaware corporation. It is and was a conglomerate with holdings in diversified fields. Its securities are and were traded on the NYSE. Defendants Nicolas M. Salgo and David W. Wallace are and were principal officers and directors of BPC.

COMPLAINT

8. The First Boston Corporation ("First Boston") is and at or about and prior to August 4, 1969 was a Massachusetts corporation. It is and was an investment banking firm and also a registered broker-dealer. In connection with the events involved herein it served as investment advisor to Piper and as Underwriter for for BPC. Defendant Paul L. Miller is and was President of First Boston and Nicholas H. Bayard is and was Vice-President in charge of its Underwriting Department.

9. Prior to August 4, 1969, CCI, a Delaware corporation, whose securities were traded on the NYSE sought to acquire Piper shares in order to control Piper and thereupon, or thereafter, to merge Piper and CCI.

10. On or about and between January 23, 1969 and August 4, 1969, in furtherance of its program alleged in paragraph 9 above, CCI made tender and exchange offers to the plaintiff and other Piper stockholders similarly situated, the last of which expired on August 4, 1969.

COMPLAINT

11. In and by its last said tender and exchange offer to Piper stockholders, CCI announced a specific package of CCI securities to be exchanged for Piper shares. First Boston estimated that the package was worth \$70-74 per Piper share, exclusive of \$10 in cash additionally offered by CCI to Piper stockholder. First Boston's estimate was given to all of the defendants.

12. In search of an effective means to defeat CCI, the defendants, acting in concert prior to August 4, 1969, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaged in fraudulent, deceptive or manipulative acts or practices in connection with CCI's tender offers or invitations for tenders, soliciting the plaintiff and other Piper stockholders similarly situated in opposition to CCI's several offers and in support of BPC's exchange offers, as hereinafter alleged.

COMPLAINT

13. On or about and subsequent to January 26, 1969, by telegram and letters, the Piper family in the name of Piper wrongfully urged the plaintiff and other Piper stockholder similarly situated not to tender their Piper shares to CCI and they stated, inter alia, that CCI's offers were "inadequate" and "not in the best interests" of Piper stockholders, and that "NOT ONE OF YOUR BOARD OF DIRECTORS OR MANAGEMENT WILL TENDER HIS SHARES," to CCI, which said defendants emphasized to induce Piper stockholders to follow the alleged lead of Piper's "BOARD OF DIRECTORS AND MANAGEMENT," but they omitted to disclose to the plaintiff and other Piper stockholders similarly situated that First Boston had rendered an opinion to Piper stating that CCI's original tender offer of \$65 in cash for each Piper share tendered was fair and equitable, and, as hereinbefore in paragraph 11 hereof stated, CCI's final tender offer of a package of CCI's securities to be exchanged for each Piper share tendered was estimated by First Boston to be worth \$70-74 per Piper share; and they omitted to disclose that not all members of Piper's Board

COMPLAINT

of Directors and Management held Piper shares, as a result of which the above emphasized statement was also calculated to mislead Piper stockholders into believing that they did.

14. In or about and subsequent to May, 1969, by press release calculated to deceive the plaintiff and other Piper stockholders similarly situated and to deprive them of and dissuade them from accepting CCI's tender or exchange offers and to induce them not to do so, the defendants wrongfully announced an offer to exchange Piper shares for a package of securities of BPC, valued by First Boston at not less than \$80 for each Piper share, but such value was untrue as the defendants well knew or are chargeable with knowledge, for reasons hereinafter set forth, among others, which the defendants omitted to disclose.

15. The said announcement of BPC's exchange offer was furthermore illegally made and disseminated to the plaintiff and other Piper shareholders similarly situated, in that no registration statement covering said offer had been filed with the SEC or was, in effect, as required by law.

COMPLAINT

16. Thereafter, and following an injunction action instituted by the SEC against Piper and BPC, for Securities Act violation, a registration statement of the package of securities offered by BPC to be exchanged for Piper shares was filed by the defendants as required by law, in which First Boston acted as Underwriter. Such registration wrongfully furthered the plan, scheme and conspiracy of the defendants to deprive the plaintiff and other Piper stockholders similarly situated from accepting CCI's tender or exchange offers and to induce them not to do so, in that, among other things, the package of securities offered for each Piper share was alleged therein to be worth \$80 per Piper share, as evaluated by First Boston, but the defendants omitted to disclose that BPC's assets and financials omitted to reflect the terms of outstanding institutional loans and included therein its holdings in the Bangor and Aroostock Railroad ("BAR") at a figure which it carried on its books in the amount of \$18.4 million, although it had pending and deferred a transaction for the sale of its holdings in BAR for about \$5 million, which it consummated shortly

COMPLAINT

thereafter, as a result of which the profits which BPC had publicly reported, and upon which said evaluation of its package offered to Piper stockholders was materially based, were, in fact, wiped out and therefore were, in fact, non-existent, all of which the defendants continued to conceal from the plaintiff and the other Piper stockholders similarly situated during the period when CCI's exchange offer was yet in effect and had not yet expired, and the Piper family, purporting to act for Piper, for their own self and conflicting interests, which they omitted to disclose, wrongfully recommended the BPC package of securities over the CCI package of securities, which were, in fact, of greater value than BPC's package of securities, and shareholders were deceived thereby.

17. In addition, and following the aforesaid registration by BPC, the defendants, acting together and in concert, wrongfully and unlawfully negotiated and acquired for BPC certain blocks of Piper shares, through private sale, during the pendency of BPC's exchange offer for Piper shares and before the same had expired, all purported to deprive the

COMPLAINT

Piper public stockholders, other than such sellers, of and from CCI's offers, which did not expire until August 4, 1969, when CCI gave up the race and competition for Piper shares.

18. Plaintiff and Piper stockholders similarly situated were thereby deceived and deprived of and from CCI's tender and exchange offers, or induced and dissuaded from selling their Piper shares to CCI.

19. As a result of the misconduct of the defendants, trading in Piper shares on the NYSE was suspended by the SEC and as a direct or indirect result thereof Piper was eventually delisted from the NYSE, to the loss and damage of the plaintiff and other Piper shareholders similarly situated.

20. Plaintiff and other members of the class had no knowledge of the wrongful and illegal acts of the defendant hereinabove mentioned, and could not have discovered them by the exercise of reasonable diligence at or prior to the expiration of CCI's tender and exchange offers aforementioned.

COMPLAINT

21. BPC and First Boston well knew or should have known of the misconducts of the defendants which occurred prior to May, 1969, when they joined in the scheme and plan complained of and participated in or aided and abetted the wrongful acts complained of and are chargeable therewith.

22. Plaintiff and other members of the class he represents relied upon the registration and proxy statements, recommendations, prospectus reports and writings of the defendants, and upon their material omissions, and did not accept CCI's tender and exchange offers, and hold their Piper shares, or have since sold their Piper shares at less than the tender offers of CCI.

23. Plaintiff's claims herein are based, in part, upon the determinations of the United States Court of Appeals for the Second Circuit in the action brought by CCI v. Piper, et al., and CCI v. BPC, reported in 480 F.2d 341.

WHEREFORE, plaintiff demands judgment

(1) that defendants be jointly or severally

COMPLAINT

directed to account and pay to the plaintiff and other Piper stockholders similarly situated their damages, as a result of the wrongful acts and material omissions of the defendants or in which they participated in or aided and abetted.

(2) That the Court determine that this action be maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure and that the class be determined to constitute those stockholders who were wrongfully deprived of CCI's tender and exchange offers, and assessing the damages of the plaintiff and those of other members of the class resulting therefrom.

(3) That the Court grant plaintiff such other, further or different relief as to the Court seems just.

(4) That the Court award plaintiff reasonable attorneys and accountants fees and expenses and the cost and disbursements of this action.

Dated: New York, New York

PLAINTIFF'S NOTICE OF MOTION FOR CLASS
DETERMINATION AND PARTIAL SUMMARY JUDGMENT
DATED AUGUST 23, 1976

Same Title

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavits of IRVING BIZAR and RICHARD J. STULL, sworn to August 23, 1976, plaintiff's motion dated September 12, 1975, decision of this Court thereon, the complaint, Chris-Craft Industries v. Bangor Punta, Inc., et al., and the prior proceedings herein, the undersigned will move this Court on September 24th, 1976, at 2:30 P.M. in Room 905, United States District Courthouse, Foley Square, New York, New York, or as soon thereafter as counsel can be heard for an order (1) pursuant to FRCP Rule 23 and Rule 11A of the Civil Rules of this Court, determining this action to be a class action and (2) pursuant to FRCP Rule 56(a) granting partial summary judgment to plaintiff and the class against all defendants, declaring said defendants to be liable to plaintiff and the class, and for such other and further relief as the Court may deem just and proper.

Dated: August 23rd, 1976.

DEMOV MORRIS, LEVIN & SHEIN

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RULE 9(g) STATEMENT

Same Title

1. Plaintiff is a shareholder of Piper Aircraft Corporation, having acquired 50 shares by purchase on the New York Stock Exchange in or about January 1962 and 25 shares as a common stock dividend in or about November 1964. He has held these shares continuously and specifically during the period when Chris-Craft Industries, Inc. made tender offers in the year 1969 for the stock of Piper Aircraft Corporation.

2. The United States Court of Appeals for the Second Circuit in litigations entitled Chris-Craft Industries, Inc. v. Bangor Punta Corporation, et al., 480 F.2d 341 and CCH Fed. Sec. Law Rep. Decisions, ¶ 95,058 (April 11, 1975), conclusively held defendants with having violated Section 14(e) of the Securities and Exchange Act of 1934, which violations were designed to defeat the tender offers of Chris-Craft Industries, Inc. for the stock of Piper Aircraft Corporation.

Dated: August 23rd , 1976.

DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiff

AFFIDAVIT OF IRVING BIZAR IN SUPPORT OF MOTION
FOR CLASS DETERMINATION AND PARTIAL
SUMMARY JUDGMENT DATED AT NEW YORK 23, 1976

Same Title

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

IRVING BIZAR, being duly sworn, deposes and says:

I am a member of the bar of this Court and of the firm of Demov, Morris, Levin & Shein, attorneys for the above-named plaintiff. I am familiar with the facts and prior proceedings herein and submit this affidavit in support of the annexed motion for (1) class determination under FRCP Rule 23, and (2) for partial summary judgment against defendants pursuant to Rule 56.

As will be shown hereinafter, the motion should be granted.

Nature of the Action

This class action is brought on behalf of the remaining public shareholders of defendant Piper Aircraft Corporation ("Piper" hereinafter) for violations of Section 14 of the Securities Exchange Act of 1934 and the Rules of the Securities and Exchange Commission applicable thereto.

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AFFIDAVIT IN SUPPORT OF CLASS DETERMINATION

The violations occurred during the tender offers made by Chris-Craft Industries, Inc. ("CCI" hereinafter) and Bangor Punta Corporation ("BP" hereinafter) in 1969. The complaint charges that the defendants made and engaged in fraudulent statements and practices designed to induce, and did induce, the public shareholders of Piper from accepting the two tender offers of CCI. The action rests, in part, upon the determinations of the United States Court of Appeals for the Second Circuit in the actions entitled Chris-Craft Industries, Inc. v. Piper Aircraft Corp., 430 F.2d 341 (2nd Cir. 1973) and CCH Fed. Sec. Law Rep., Decisions ¶ 95,058 (April 11, 1975).

Prior Proceedings

An earlier motion for class determination and partial summary judgment was made by plaintiff on or about September 12, 1975. This Court denied the motion without prejudice to renewal after the parties completed discovery. Magistrate Schreiber ruled that discovery would be limited to class questions.

Accordingly, plaintiff was deposed and documents were produced.

Thus, plaintiff's motion for class determination and

AFFIDAVIT IN SUPPORT OF MOTION FOR
CLASS DETERMINATION

Partial summary judgment is now ready for renewal.

Class Determination

As plaintiff's Memorandum of Law more fully shows, this action meets the requirements of a class action under Rule 23.

1. The class is so numerous that joinder of all members is impracticable. While the exact number of the remaining public shareholders of Piper is not now known, it is sufficiently large to merit class action treatment. We estimate that the class consists of between 300 to 1,000 shareholders. Prior to the tender offers made by CCI and BP, there were 1,644,790 shares of Piper outstanding (including the controlling interestss held by the Piper family). As a consequence of the various tender offers, CCI owned 697,495 shares and BP owned 839,306 shares or a total of 1,536,801 shares, including the controlling interest owned by the Piper family. That left approximately 107,000 shares still outstanding in the hands of the public shareholders. Assuming each shareholder owns 100 shares, it would mean that there are approximately 1,000 members of the class; if each shareholder owned approximately 200 shares, it would mean there are approximately

AFFIDAVIT IN SUPPORT OF MOTION FOR
CLASS DETERMINATION

500 members of the class. The Second Circuit stated that there were 1,400 public shareholders in its opinion of April 11, 1975.

The information respecting the exact members of the class and its identity is in the exclusive possession of the defendants. However, it is clear from the foregoing that the class is sufficiently numerous as to require class determination. Indeed, the compelled joinder of 500 or 1,000 or 1,400 persons in this litigation would not be practicable.

2. The common questions of the law and fact predominates over any individual questions. The representations and practice committed by defendants to induce the public shareholders not to accept CCI's tender offers operated across the board and affected the public shareholders alike. The practices and representations were fraudulent. Thus, the issues of fact and law are common to the class, and outweigh any individual issues. The common issues include:

- (a) Were there fraudulent representations and practices committed upon the public shareholders;
- (b) Were these practices and representations

AFFIDAVIT IN SUPPORT OF MOTION FOR
CLASS DETERMINATION

committed by defendants.

The common issues have even greater commonality in view of the Second Circuit's decisions determining that the defendants did commit fraudulent practices and representations to defeat CCI's two tender offers. Thus, there is another common issue affecting every member of the class: Whether the class can obtain the benefits of the judgments of the Second Circuit. This issue also outweighs any individual issue. As we shall show in connection with our motion for partial summary judgment, we submit that the class can obtain the benefits of the judgments.

3. Plaintiff's claims are typical of the claims of the class. All members of the class are, like plaintiff, public shareholders of Piper who did not accept the tender offers of CCI and BP. Plaintiff, as did every other member of a class, relied upon and was affected by the fraudulent representations and practices of defendants. Plaintiff has no interest adverse to the class; in fact, the relief he seeks is the same as for every other member of the class.

4. Plaintiff will fully and adequately protect the interests of the class. Plaintiff intends to pursue this

AFFIDAVIT IN SUPPORT OF MOTION FOR
FOR CLASS CERTIFICATION

action vigorously. He has testified on his deposition that he will bear all costs attendant thereto, and has supplied information which indicates that he is fully capable of doing so. He has in the affidavit submitted herewith, repeated his intention to bear all costs. He is an attorney, experienced in stockholder litigation and has submitted information with respect to his deposition in this area which corroborates that experience. He has retained our firm as counsel and has testified on his deposition (and reiterated that testimony in his affidavit submitted herewith) that he will not share in any manner in the fees to be awarded to counsel. The competence and dependability of our firm as counsel to plaintiff in actions of this nature has been recognized. We have been appointed lead or general counsel in other securities class actions: In Re Revenue Properties Securities Actions, MDL No. 32, United States District Court, District of Massachusetts; In Re Caesars Palace Securities Actions, MDL No. 110, United States District Court, Southern District of New York; Lerman v. Tenney, United States District Court, Southern District of New York and Zolotnitzky v. Yablok, United States District Court, Southern District of New York. Most recently, our firm's diligence was recognized by Judge Carter

AFFIDAVIT IN SUPPORT OF MOTION FOR
CLASS DETERMINATION

of this Court in Carnivale Bag, et ano. v. Slide-Rite, et al.,
74 Civ. 5574 (Opinion dated July 23, 1976).

5. A class action is superior to any other available method for the fair and efficient adjudication of the controversy. For any individual member of the class to retain competent counsel to litigate the important issues raised herein may entail costs and expenses far in excess of the class member's individual interest. Moreover, if individual actions are brought for each member of the class, the Court and the litigants would be inundated with litigations causing unnecessary waste, duplication and would place an intolerable burden on the judiciary. In fact, there would also be the specter of possible inconsistent decisions raising questions of a repeated nature for an Appellate Court. Thus, the only practical way to resolve the issues raised herein is by class treatment.

Since the entire litigation between CCI and BP occurred in this Court and in this Circuit, all of the relevant records are here. In view of the decisions of the Second Circuit, management of this class action would present fewer problems than would be normally present in a typical securities

AFFIDAVIT IN SUPPORT OF MOTION FOR
CLASS DETERMINATION

class action litigation.

Motion for Partial Summary Judgment

Plaintiff also moves for partial summary judgment on the issue of liability as against the defendants.

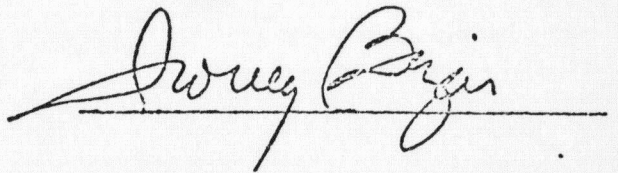
As the accompanying affidavit of RICHARD STULL discloses, he was a stockholder immediately prior to the tender offers instituted by CCI and refrained from tendering his stock to CCI as a result of the representations and conduct of the defendants. He also testified at his deposition that he was prevented from making an informed judgment as to whether to tender his shares or to sell his shares in the open market.

The United States Court of Appeals for the Second Circuit has held that the defendants violated Section 14 of the Exchange Act by their aforesaid representations and conduct during the period of the CCI tender offers.

AFFIDAVIT OF IRVING BIZAR IN SUPPORT OF PLAINTIFF'S
MOTION FOR CLASS DETERMINATION DATED AUGUST 23, 1976

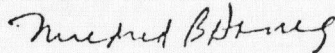
As the accompanying Memorandum of Law makes clear, plaintiff is entitled to the benefits of the aforesaid judgments and is entitled to recover from the defendants based upon the finding that they committed fraudulent representations and conduct during the tender offers.

WHEREFORE, it is respectfully requested that plaintiff's motion be granted in all respects.



Sworn to before me this

23rd day of August, 1976.



MILDRED B. HONG
NOTARY PUBLIC, State of New York
No. 41-1850381 Queens County
Certificate filed in New York County
Term Expires March 30, 1977

BEST COPY AVAILABLE

AFFIDAVIT OF RICHARD J. STULL IN SUPPORT OF PLAINTIFF'S
MOTION FOR CLASS DETERMINATION DATED AUGUST 23, 1976

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

RICHARD J. STULL, being duly sworn, deposes and says:

I am a member of the bar of the State of New York and
of this Court.

I make this affidavit in support of the annexed motion
for class determination and partial summary judgment.

I am a stockholder of defendant Piper Aircraft Corp.
("Piper") and have been such continuously since I purchased
fifty shares of Piper stock on the New York Stock Exchange
in or about January 1962. Subsequent to that purchase, I
received twenty-five shares of Piper stock as a dividend
in November 1964. (Copies of the Stock Certificates are
annexed as an Exhibit.)

I was a shareholder immediately prior to the commencement
of the tender offers of Chris-Craft Industries, Inc. and
the subsequent offers of Bangor-Punta, Inc. I did not tender

AFFIDAVIT OF RICHARD J. STULL IN SUPPORT OF
MOTION FOR CLASS DETERMINATION DATED AUGUST 23, 1976

my stock, nor was I able to make an informed judgment with respect as to whether I should tender my stock or sell my shares in the open market, as a result of the statements, representations and conduct of the defendants that the CCI tender offers were inadequate.

I intend to prosecute this action vigorously, and will pay all costs attendant thereto. My net worth is in excess of approximately \$100,000 and is more than sufficient to pay for such costs.

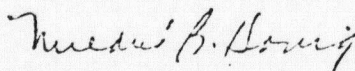
Although I am an attorney experienced in stockholder litigations, I have no agreement and do not intend to share, in any fees to be awarded by this Court.

WHEREFORE, it is respectfully requested that plaintiff's motion be granted.


Richard J. Stull

Sworn to before me this

23rd day of August, 1976.


MILDRED B. HONTELA
NOTARY PUBLIC, State of New York
No. 41-1850351 - Queens County
Certificate filed in New York County
Expires March 30, 1977

CROSS-MOTION OF DEFENDANT BANGOR PUNTA
CORPORATION FOR SUMMARY JUDGMENT DATED
NOVEMBER 30, 1976

Same Title

S I R S:

PLEASE TAKE NOTICE that upon the pleadings herein and upon all the papers served by you on the 23rd day of August, 1976, whereby you gave notice of motion for summary judgment for plaintiff, and upon the annexed affidavit of Allan J. Graf and the memorandum of law of Bangor Punta Corporation, the undersigned will make a cross-motion to your said motion at the United States Court House, City of New York, New York, on the 30th day of November, 1976, or as soon thereafter as counsel can be heard, that this court enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in defendant's favor dismissing the action, on the grounds that (1) there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law and (2) that plaintiff's claim is barred by the applicable statute of limitations.

Dated: November 30, 1976

WEBSTER & SHEFFIELD

By St James V. Ryan
A Member of the Firm
Attorneys for Defendant
Bangor Punta Corporation

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AFFIDAVIT OF ALLAN J. GRAF IN SUPPORT OF
CROSS-MOTION OF DEFENDANT BANGOR PUNTA
CORPORATION FOR SUMMARY JUDGMENT IN
OPPOSITION TO PLAINTIFF'S MOTION FOR
CLASS DETERMINATION, DATED NOVEMBER 30, 1976

Same Title

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ALLAN J. GRAF, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and associated with the firm of Webster & Sheffield, attorneys for defendant Bangor Punta Corporation ("Bangor Punta"). I submit this affidavit in support of the cross-motion of Bangor Punta, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, for an order granting summary judgment in favor of Bangor Punta on the grounds that there is no genuine issue as to the fact that (a) plaintiff did not rely on any representation or act of Bangor Punta in choosing not to accept the Chris-Craft exchange offer, and (b) plaintiff's claim is barred by the applicable statute of limitations. I also submit this affidavit on behalf of Bangor Punta in opposition to the motion of plaintiff Richard Stull for an order (a) pursuant to Rule 23(c) determining the above action to be a class action and (b) pursuant to Rule 56(a) granting partial summary judgment.

AFFIDAVIT OF ALAN J. GRAF IN SUPPORT OF
CROSS MOTION OF DEFENDANT BANGOR PUNTA
CORPORATION FOR SUMMARY JUDGMENT, IN OPPOSITION
TO PLAINTIFF'S MOTION FOR CLASS DETERMINATION,
DATED NOVEMBER 30, 1976

2. Plaintiff has already made one motion to have this action certified as a class action. That motion was denied without prejudice, and plaintiff was granted leave to renew his motion after discovery on the class action issues was completed. Plaintiff's deposition was taken on December 16, 1975 and July 27, 1976. Discovery has been completed, and plaintiff has renewed his motion.

BACKGROUND

3. This action arises out of the contest between Chris-Craft Industries, Inc. ("Chris-Craft") and Bangor Punta for control of Piper Aircraft Corporation ("Piper"). In January, 1969, Chris-Craft began to make substantial purchases of Piper stock with the possible objective of acquiring control. On January 20, 1969, Chris-Craft made a cash tender offer of \$65 to Piper shareholders, which offer closed on February 4, 1969. Subsequently, Chris-Craft made an exchange offer to Piper shareholders, which became effective on May 15, 1969 and closed on July 29, 1969.

AFFIDAVIT OF ALAN J. GRAF IN SUPPORT OF
CROSS MOTION OF DEFENDANT BANGOR PUNTA
CORPORATION FOR SUMMARY JUDGMENT, IN OPPOSITION
TO PLAINTIFF'S MOTION FOR CLASS DISCLOSURE,
DATED NOVEMBER 30, 1976

4. Bangor Punta did not enter the contest for control of Piper until May 8, 1969, at which time Bangor Punta announced by press release that it would make a registered exchange offer of its own to Piper shareholders. Bangor Punta's exchange offer became effective on July 13, 1969 and closed on August 4, 1969.

* * * * *

PLAINTIFF'S CLAIM IS BARRED BY THE
APPLICABLE STATUTE OF LIMITATIONS

15. Summary judgment should be granted in favor of Bangor Punta because the facts conclusively establish that plaintiff's claim against Bangor Punta is barred by the applicable statute of limitations.

16. Plaintiff's claim against Bangor Punta is brought pursuant to Sections 14(d) and 14(e) of the Securities Exchange Act of 1934. Since these sections of the Act contain no statute of limitations, the relevant state statutes of limitations are applied - in this case the New York statute of limitations for claims based on fraud. New York Civil Practice Law and Rules §§ 203(f) and 213(d). As is pointed out in Bangor Punta's memorandum of law, the New York statute provides that fraud claims shall be barred if brought more than six years after

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AFFIDAVIT OF ALAN J. GRAY IN SUPPORT OF
CROSS MOTION OF DEFENDANT BANGOR PUNTA
CORPORATION FOR SUMMARY JUDGMENT IN OPPOSITION
TO PLAINTIFF'S MOTION FOR CLASS DETERMINATION,
DATED NOVEMBER 30, 1975

the alleged fraudulent acts or more than two years after the plaintiff's discovery of the fraud, whichever is longer.

17. The alleged fraudulent acts by Bangor Punta, of which plaintiff complains, occurred between May 8 and July 18, 1969. Bangor Punta's press release (Complaint ¶22) was issued on May 8, 1969, and the purchases of Piper stock alleged to have been in violation of SEC Rule 10b-6 (Complaint ¶24) were also made in May, 1969. Bangor Punta's registration statement (Complaint ¶23) was issued on July 18, 1969. Plaintiff filed this action on August 1, 1975, more than six years after the occurrence of any of the alleged fraudulent acts. Pursuant to New York CPLR §213(8), this action should be barred.

18. Furthermore, plaintiff did not commence this action within two years of his discovery of the alleged fraud. Plaintiff knew of Bangor Punta's alleged fraud as of May 13, 1970, the date on which he signed the last amended and supplemental complaint in Stull v. Green. (¶11 of this Affidavit, supra) Thus pursuant to New York CPLR §203(f), this action should be barred.

19. As is pointed out in Bangor Punta's memorandum of law, the applicable statute of limitations was not tolled by the pendency of a virtually identical class action, Stull

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AFFIDAVIT OF ALAN J. GRAY IN SUPPORT OF
CROSS MOTION OF DEFENDANT BANGOR PUNTA
CORPORATION FOR SUMMARY JUDGMENT IN OPPOSITION
TO PLAINTIFF'S MOTION FOR CLASS DETERMINATION,
DATED NOVEMBER 30, 1974

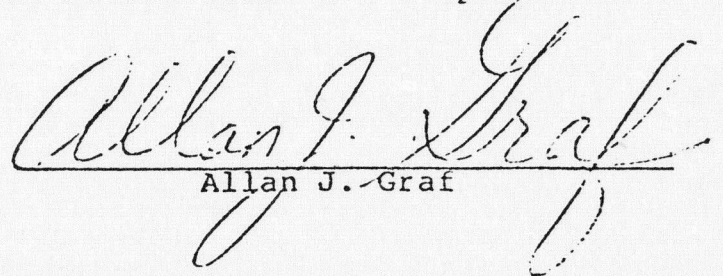
v. Pool (72 Civ. 2055), in which plaintiff's wife, Lillian Stull, was the nominal plaintiff and was again represented by her husband, the plaintiff herein, as attorney. In Stull v. Pool, Lillian Stull sought to represent the exact same class as her husband seeks to represent in this suit. The allegations of liability on the part of Bangor Punta are virtually identical in the two actions. Stull v. Pool was denied certification as a class action by Judge Owen of this Court on April 30, 1974 on the grounds that Lillian Stull was an inadequate representative of the class. Stull v. Pool, 63 F.R.D. 703 (S.D.N.Y. 1974). Lillian Stull's appeal was dismissed by an order of the Court of Appeals for the Second Circuit, dated October 8, 1974.

20. After class action certification was denied in Stull v. Pool, plaintiff herein did not seek to intervene in that action. Plaintiff instead chose to wait almost one year before instituting this entirely new and separate action. As is pointed out in Bangor Punta's memorandum of law, the statute of limitations would have been tolled only if plaintiff had intervened in Stull v. Pool after class action status for that action was denied

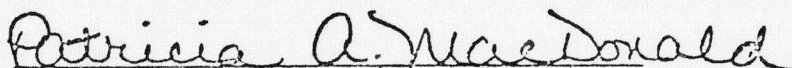
AFFIDAVIT OF ALAN J. GRAF IN SUPPORT OF
CROSS MOTION OF DEFENDANT BANGOR PUNTA
CORPORATION FOR SUMMARY JUDGMENT IN OPPOSITION
TO PLAINTIFF'S MOTION FOR CLASS DETERMINATION,
DATED NOVEMBER 30, 1976

* * * * *

WHEREFORE, it is respectfully requested that defendant
Bangor Punta's cross-motion for summary judgment be granted
and that plaintiff's motion for class action certification
and partial summary judgment be denied in all respects.


Allan J. Graf

Sworn to before me this
30th day of November, 1976.


Notary Public

PATRICIA A. MACDONALD
Notary Public, State of New York
No. 41-2445050
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1977

EXHIBITS WHICH WERE ANNEXED TO
AFFIDAVIT OF ALVAN E. GRAF ANNEXED
TO CROSS MOTION OF DEFENDANT BANCOR
PUNTA CORPORATION ARE OMITTED

CROSS MOTION OF DEFENDANTS HOWARD PIPER,
THOMAS F. PIPER AND WILLIAM I. PIPER, JR.
("the PIPER DEFENDANTS" FOR SUMMARY
JUDGMENT DATED NOVEMBER 30, 1976

Same Title

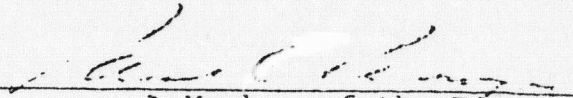
PLEASE TAKE NOTICE that upon the complaint herein, the annexed affidavit of Paul G. Pennoyer, Jr., sworn to October 29, 1976, and the exhibits thereto, the transcripts of plaintiff's depositions held on October 9-10, 1975 and July 27, 1976, the memorandum in support of the motion and the annexed statement pursuant to Rule 9(g) of the General Rules of this Court, and upon all the pleadings and proceedings heretofore had herein, the undersigned will cross-move this Court before the Honorable Inzer B. Wyatt on the 17th day of December, 1976 at 2:30 o'clock p.m., or as soon thereafter as counsel may be heard, in Room 1506, United States Courthouse, Foley Square, New York, New York for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, for summary judgment against plaintiff on the grounds that there is no issue as to any material fact and that the moving parties are entitled to judgment as a matter of law,

CROSS MOTION OF DEFENDANTS HOWARD PIPER,
THOMAS F. PIPER AND WILLIAM T. PIPER, JR.
("the PIPER DEFENDANTS") FOR SUMMARY
JUDGMENT DATED NOVEMBER 30, 1976

and for such other and further relief as this Court may
deem just and proper.

New York, New York
November 30, 1976.

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By 

A Member of the Firm

Attorneys for Defendants, Howard
Piper, Thomas F. Piper and
William T. Piper, Jr.

30 Rockefeller Plaza

New York, New York 10020

(212) 541-5800

TO: DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiff
40 West 57th Street
New York, New York 10019

SULLIVAN & CROMWELL
Attorneys for Defendant
First Boston Corporation
48 Wall Street
New York, New York 10005

WEBSTER & SHEFFIELD
Attorneys for Defendant
Bangor Punta Corporation
1 Rockefeller Plaza
New York, New York 10020

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AFFIDAVIT OF PAUL G. PENNOYER, JR. IN
SUPPORT OF CROSS MOTION OF DEFENDANTS HOWARD
PIPER, THOMAS F. PIPER AND WILLIAM I. PIPER, JR.
("the PIPER DEFENDANTS") FOR SUMMARY JUDGMENT,
IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS
DETERMINATION, DATED NOVEMBER 30, 1976

Save Title

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

PAUL G. PENNOYER, JR., being duly sworn, deposes
and says:

1. I am a member of the firm of Chadbourne,
Parke, Whiteside & Wolff, attorneys for defendants Howard
Piper, Thomas F. Piper and William I. Piper, Jr. ("the
Piper defendants"). I am fully familiar with the matters
hereinafter set forth and make this affidavit in opposition
to plaintiff's motion for an order (1) pursuant to Rule 23
of the Federal Rules of Civil Procedure, determining that
this action be maintained as a class action and (2) pur-
suant to Rule 56(a) of the Federal Rules of Civil Procedure
granting partial summary judgment against the defendants on
the issue of liability. I also submit this affidavit in
support of the Piper defendants' cross-motion, pursuant
to Rule 56(b), for an order granting summary judgment
against the plaintiff.

2. This is a purported stockholder's representa-

AFFIDAVIT OF PAUL G. PFENNYER, JR. IN
SUPPORT OF CROSS MOTION OF DEFENDANTS HOWARD
PIPER, THOMAS F. PIPER AND WILLIAM T. PIPER, JR.
("the PIPER DEFENDANTS") FOR SUMMARY JUDGMENT,
IN OPPOSITION TO PLAINTIFF'S MOTION FOR
CLASS DETERMINATION, DATED NOVEMBER 30, 1970

tive action by Richard Stull, brought pursuant to Sections 14(d) and 14(e) of the Securities Exchange Act. The action arises out of a contest between Chris-Craft Industries, Inc. ("Chris-Craft") and Bangor Punta Corporation ("Bangor Punta") for control over Piper Aircraft Corporation ("Piper") during the period from January 23, 1969 to September 5, 1969.

3. The key events in the contest for control are as follows. On January 23, 1969, Chris-Craft announced a limited cash tender offer at \$65 per share for up to 300,000 shares of common stock of Piper. After Piper's management received advice from outside consultants, it decided that Chris-Craft's investment in Piper would not be in the interests of Piper shareholders. By letters dated January 27 and 28, 1969, over the signature of William T. Piper, Jr., President of Piper at the time, the shareholders were advised not to accept Chris-Craft's tender offer. True copies of both letters are attached hereto as Exhibits A and B, respectively.

4. Chris-Craft completed its cash tender offer on February 3, 1969, having received more than 300,000 shares of Piper. Seeking to gain additional Piper shares,

AFFIDAVIT OF PAUL G. PENHOYER, JR. IN
SUPPORT OF CROSS MOTION OF DEFENDANTS HOWARD
PIPER, THOMAS F. PIPER AND WILLIAM I. PIPER, JR.
("the PIPER DEFENDANTS") FOR SUMMARY JUDGMENT
IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS
DETERMINATION, DATED NOVEMBER 30, 1976

Chris-Craft filed a registration statement with the Securities and Exchange Commission late in February, for an exchange offer for a minimum of 80,000 shares of Piper stock. The exchange offer became effective on May 19, 1969, but was withdrawn in July 1969 when Chris-Craft announced a second exchange offer, the same as the first one, with the exception of four additional warrants, for up to 300,000 shares, which became effective July 24, 1969 and expired August 4, 1969.

5. Bangor Punta entered the contest for control in May 1969. On May 8th it issued a press release announcing an exchange offer for Piper stock. On May 29, 1969 it filed its registration statement for the exchange offer which became effective on July 18, 1969. Defendant First Boston Corporation served as the underwriter of Bangor Punta's registration statement. The exchange offer expired on July 29, 1969 with approximately 110,000 shares being tendered. By letters dated June 4 and July 25, 1969, over the signature of William T. Piper, Jr., (true copies of which are attached hereto as Exhibits C and D, respectively), the Piper shareholders were advised to accept

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AFFIDAVIT OF PAUL G. PENNOYER, JR. IN
SUPPORT OF CROSS MOTION OF DEFENDANTS HOWARD
PIPER, THOMAS L. PIPER AND WILLIAM L. PIPER, JR.
(Also PIPER DEFENDANTS) FOR SUMMARY JUDGMENT,
IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS
DETERMINATION, DATED NOVEMBER 22, 1976

Bangor Punta's exchange offer. On August 8, 1969 Bangor Punta began making open market purchases of Piper shares and by September 5, 1969 had acquired over 50% of the stock of Piper and had won the contest for control by the purchase of over 100,000 shares for cash on the open market.

6. A copy of a chart detailing the open market prices and volume of Piper shares traded on the New York Stock Exchange from January 1, 1969 through August 8, 1969 is attached hereto as Exhibit E. The open market prices and volume of Piper shares traded on the Philadelphia-Baltimore-Washington Exchange for the period from August 11, 1969 through August 29, 1969 are set forth in a copy of a chart attached hereto as Exhibit F.

* * * * *

9. For the reasons set forth in the Piper defendants' memorandum, I respectfully request that their motion for summary judgment be granted and plaintiff's motion for a class determination and partial summary judgment be denied.

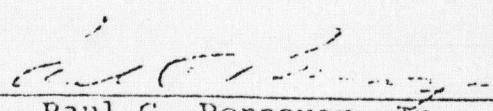

Paul G. Pennoyer, Jr.

EXHIBIT A
ANNEXED TO PAUL C. PENNOVER, JR.'S AFFIDAVIT

PIPER AIRCRAFT CORPORATION
Lock Haven, Pennsylvania 17745

IMPORTANT

January 27, 1969

DEAR SHAREHOLDER:

In an attempt to gain control of your Company, Chris-Craft Industries, Inc., a small New York based conglomerate, has offered to purchase 300,000 shares of Piper Common Stock at \$65 per share.

Your Board of Directors has carefully studied this offer and is convinced that it is inadequate and not in the best interests of Piper's shareholders. Accordingly, your Board unanimously urges that it be rejected. Not one member of your Board of Directors or management will tender his shares.

Obviously, if Chris-Craft is suddenly willing to offer you \$65 per share for your shares, Chris-Craft must believe that Piper stock is worth substantially more than it is offering.

Remember, any tender of your shares will be irrevocable on or after January 30, 1969. In other words, after this date your shares could be out of your possession and control until March 24, 1969 and without any payment to you.

In addition, this offer is conditioned on your surrendering to Chris-Craft an irrevocable proxy for the annual meeting on February 4, 1969. Your management believes this is a solicitation of proxies without proper compliance with the federal securities laws and has referred the matter to counsel.

EXHIBIT A
ANNEXED TO PAUL C. PENNOYER, JR.'S AFFIDAVIT

In your own interest, we urge you to consider carefully the following important points:

1. This offer is a fully taxable transaction.
2. Piper's stock has traded as high as \$72.25 on the New York Stock Exchange within the past eight months.
3. Piper's sales increased more than 20% in fiscal 1968 over the prior year, and its earnings per share were approximately 29% higher.
4. The general aviation industry is a growth industry, and Piper expects to participate fully in this growth.

You should know that Piper's management has had preliminary discussions with several major industrial corporations regarding possible combination with Piper. These are continuing. In the opinion of your Board of Directors and management, if a merger or consolidation were deemed advisable, a higher value could be realized for all shareholders and possibly on a tax-free basis. Any shareholder who has tendered his shares will not, of course, benefit from any such development.

For these reasons, your Board of Directors again strongly recommends that you reject the Chris-Craft offer.

We will forward additional important information to you within the next several days. If I can be of further assistance to you, please do not hesitate to call me collect at (717) 748-6711.

Sincerely,

s/ W. T. PIPER, JR.
W. T. Piper, Jr.
President

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EXHIBIT B

ANNEXED TO PAUL G. PENNOYER, JR.'S AFFIDAVIT

PIPER AIRCRAFT CORPORATION
Lock Haven, Pennsylvania 17745

January 28, 1969

DEAR SHAREHOLDER:

In our letter of January 27, 1969, the Board of Directors unanimously urged you to reject the tender offer, conditioned upon an "irrevocable" proxy, by Chris-Craft Industries, Inc. Your Management firmly believes this offer is inadequate and not in the best interests of Piper shareholders.

The annual meeting of shareholders of Piper will be held Tuesday, February 4, 1969 to elect directors and approve the selection of independent auditors. All shareholders as of the record date, January 3, 1969, are entitled to vote at this meeting. Since the directors are to be elected on a cumulative voting basis it is important to have as high a representation as possible at the meeting.

Chris-Craft has announced that it has purchased 200,500 shares of Piper previous to its tender offer "with a view to control of Piper". In addition, Chris-Craft has stated that if its offer is successful it would then plan to combine Chris-Craft and Piper. Since Chris-Craft's offer, which expires on February 3, 1969, asks for an "irrevocable" proxy for the annual meeting to be held the following day, Chris-Craft would then be in a position to elect its own representatives to your Board of Directors. *If Chris-Craft then continued its plan to combine Chris-Craft and Piper, Chris-Craft in effect would be dealing with itself or its own representatives.* Certainly the fiduciary duty of Piper's Board of Directors is to the Piper shareholders. On the other hand, the fiduciary duty of Chris-Craft's directors or representatives would be to Chris-Craft's shareholders—not to you.

EXHIBIT B

ANNEXED TO PAUL G. PENNOYER, JR.'S AFFIDAVIT

Your Board of Directors and Management firmly believe that Chris-Craft's offer is the first step in a plan to gain control of Piper and then merge Piper into Chris-Craft Industries rather than dealing on an arm's-length bargaining basis.

In your own best interests, we urge you to support your present independent Board of Directors. Regardless of the number of shares you may own please sign, date and mail your proxy today.

We will continue to keep you informed.

Sincerely,

s/ W. T. Piper, Jr.
W. T. PIPER, JR.
President

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EXHIBIT C

ANNEXED TO PAUL C. PENNOYER, JR.'S AFFIDAVIT

Piper Aircraft Corporation

Lock Haven, Pennsylvania 17745

IMPORTANT

June 4, 1969

DEAR PIPER SHAREHOLDER:

On May 29, 1969 Bangor Punta Corporation filed a registration statement with the Securities and Exchange Commission for a proposed Exchange Offer of a package of its securities for all shares of Piper Aircraft Corporation that you may own. A copy of the Preliminary Prospectus relating to this proposed Exchange Offer was mailed to you last week. In your own interests we urge you to read and study this material carefully.

Bangor Punta's proposed offer for each of your Piper shares consists of one share of Bangor Punta common stock, a warrant to purchase 3.25 shares of Bangor Punta common stock at \$55 per share and \$15 principal amount of a new Bangor Punta 5½% convertible subordinated debenture.

If you have not received your copy of Bangor Punta's Preliminary Prospectus, please do not hesitate to call collect or write us or D. F. King & Co., Inc., 48 Wall Street, New York, N. Y. 10005 (212-269-5550).

Sincerely,

W. T. Piper, Jr.

W. T. PIPER, JR.

Chairman of the Board of Directors and President

EXHIBIT D

ANNEXED TO PAUL G. PENNOYER, JR.'S AFFIDAVIT

Piper Aircraft Corporation

IMPORTANT

July 25, 1969

Dear Fellow Shareholder:

On July 19, 1969 you were sent a Prospectus and a Letter of Transmittal from Bangor Punta Corporation in connection with its exchange offer for any and all outstanding shares of common stock of Piper Aircraft Corporation. This offer became effective on July 18 and will expire at 5:00 p.m., New York time, on July 29, unless extended.

Under the terms of its offer Bangor Punta will exchange for each share of Piper common stock the following Bangor Punta securities:

1.2 Common Shares

Warrants to purchase 3.5 Common Shares

\$31 principal amount of 8¼% Convertible Subordinated Debentures Due 1994

The members of your Board of Directors (with the exception of Messrs. Gordon and Rochlis, the directors elected by Chris-Craft) sincerely believe that a combination with Bangor Punta is in the best interests of all the shareholders. Your management and Executive Committee have been impressed with the management and operations of Bangor Punta. We strongly recommend that you accept the Bangor Punta offer.

If you desire to take advantage of this offer, you may do so by completing the Letter of Transmittal and forwarding it together with your stock certificates or by having your broker or any bank send a telegram to Irving Trust Company, One Wall Street, New York, New York 10015, giving your name and the number of shares tendered and guaranteeing delivery of stock certificates and a Letter of Transmittal within eight days of notice of acceptance from Bangor Punta. In any case, your communication must be received by Irving Trust Company before 5:00 p.m. on Tuesday, July 29.

On behalf of the Executive Committee and management I would like to express my sincere appreciation for the confidence and loyal support of our many shareholders during this difficult time.

BEST COPY AVAILABLE

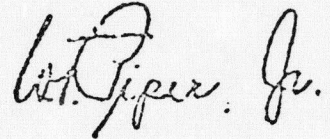
A58

EXHIBIT D

ANNEXED TO PAUL G. BENDER'S AFFIDAVIT

we urge you again to accept the Banger Punta offer. If you have any questions concerning this offer, please do not hesitate to call us, The First Boston Corporation (212-344-1515) or your banker, broker or investment advisor.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. T. Pifer, Jr." with a stylized, cursive script.

W. T. PIFER, JR.

*Chairman of the Board of Directors
and President*

159
EXHIBIT E

RELATED TO PAUL G. MULLONI, JR.'S AFFIDAVIT

1969

PIPER AIRCRAFT CORP.			
MONTHLY PAYROLL DATA			
DATE	NAME	SSN	WAGE
NEW HIRE DATA			
1/1	HOLIDAY		
2	11 51-5 51-1 51-1		
3	345 54 51-1 51-1		
4	174 5.61 54-4 54-4		
5	221 54-2 54 54-2		
6	25 51-4 51 51-2		
7	325 51-4 51-2 51-4		
8	12 51-7 51-5 51-5		
9	3 51-1 51-2 51-2		
10	546 5.61 54 54		
11	22 51-2 51-4 51-4		
12	55 51 51-2 51-4		
13	12 51 51-4 51-4		
14	26 51 51-4 51-4		
15	7 51-5 51-2 51-1		
16	324 5.51 51-3 51-3		
17	20 51-6 51-7 51-7		
18	39 51-7 51-2 51-7		
19	21 51-7 51-2 51-7		
20	139 60-4 59 60-4		
21	348 60-7 61-4 62-4		
22	587 6.43 51-2 51-2		
23	252 60-6 62-5 63		
24	49 60-2 61-4 61-2		
25	59 60-2 60-6 61-5		
26	120 60-6 61-4 55		
27	71 60-4 59-6 60-1		
28	551 6.26 51-1 51-1		
29	56 59-6 59-7 59-5		
30	4 18 62 60-2 62		
31	57 60-7 62-4 60-7		
32	92 67-4 65 66		
33	69 67-4 67-6 68		
34	277 6.97 51-1 51-1		
35	HOLIDAY		
36	76 670 69-3 60-5		
37	58 69-6 68 69		
38	72 69-6 67-6 69-4		
39	62 69-6 61-6 69-6		
40	246 7.30 51-3 51-3		
41	188 69 67-5 67-7		
42	139 70 67-4 70		
43	152 672 70-3 71-6		
44	149 72 70-6 71-1		
45	HOLIDAY		
46	544 7.69 51-7 51-7		
47	56 670 69 69		
48	86 69-1 67-4 67-6		
49	73 69-3 67-3 68-1		
50	28 69-1 67-5 68-1		
51	57 65 68 67		
52	279 7.34 51-3 51-3		
53	25 69 68-2 68-2		
54	21 68-5 68-6 68-5		
55	38 69-2 68-2 69		
56	43 69-4 69-2 69-4		
57	61 670 68-7 70		
58	193 7.51 57 57		
59	29 71-2 70 71-2		
60	41 71-4 72 72-5		
61	32 71-4 71-4 71-4		
62	33 71-4 71-4 71-4		
63	65 71-1 72-4 72-4		
64	120 7.13 51-5 51-5		
65	50 71-4 69-5 70-6		
66	80 71-7 72 72		
67	81 71-3 71 71-3		
68	55 71-5 71-2 71-2		
69	33 70-4 68-7 69-6		
70	201 7.75 59-2 59-2		
71	35 69 68-1 68-1		
72	14 69-2 68-4 68-2		
73	43 69-4 68-2 68-2		
74	14 69-4 69-4 69-4		
75	25 670 69-2 69-2		
76	154 7.81 51-6 51-6		
77	HOLIDAY		

1969

PIPER AIRCRAFT CORP.			
MONTHLY PAYROLL DATA			
DATE	NAME	SSN	WAGE
NEW HIRE DATA			
1/1	18 61-4 61-4 61-4		
2	24 61-4 61-4 61-4		
3	19 61-4 61-2 61-2		
4	HOLIDAY		
5	65 7.24 59-6 59-6		
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20	71 64-4 64-5 64-5		
21	32 67-2 67 67		
22	41 67 64-7 64-5		
23	20 67 67 67		
24	14 60-6 60-6 60-6		
25	175 7.21 62-2 62-2		
26	4 60-2 60-2 60-2		
27	31 60-6 60-2 60-6		
28	18 67-9 68-2 67-9		
29	32 69 68 69		
30	16 64-4 69 69		
31	101 7.27 62-2 62-2		
32	1 60-6 60-6 60-6		
33	12 69 69 69		
34	43 70 69 70		
35	105 71-4 69-4 71-4		
36	38 673 72-2 72-2		
37	217 7.62 61-1 61-1		
38	15 73 72-6 72-6		
39	16 72-4 72-4 72-4		
40	50 73 72-6 72-6		
41	16 73 672-2 72-2		
42	67 672-2 71-2 71-2		
43	167 7.69 61-1 61-1		
44	150 679 74-6 74-6		
45	59 73 74 74		
46	14 77-3 72 72		
47	23 77-3 74 74		
48	52 76 675-4 74-6		
49	299 8.03 62-2 62-2		
50	36 675-6 75 75		
51	24 75 75 75		
52	10 75 75 75		
53	48 75 676-6 75		
54	HOLIDAY		
55	130 8.00 69-6 69-6		
56	22 676-6 74-2 74-2		
57	65 74 71 71		
58	114 70 69 70		
59	23 70 69-4 69-4		
60	53 70 69-4 70		
61	201 7.91 61-1 61-1		
62	15 69 69 69		
63	14 69-6 68 68		
64	6 67-7 67-4 67-4		
65	76 67-4 60-6 60-6		
66	25 69 69 69		
67	74 7.41 64-6 64-6		
68	16 60-6 65 65		
69	23 65 60-6 60-6		
70	6 60-6 60-6 60-6		
71	12 65-6 60-6 60-6		
72	3 62 65 65		
73	58 7.47 64-6 64-6		
74	10 64-6 61-6 61-6		
75	6 61-2 61-2 61-2		
76	10 61-1 61 61		
77	2 62 61 61		
78	7 61-2 61-2 61-2		
79	31 7.29 62-2 62-2		
80	4 61-2 61-2 61-2		

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PIPER AIRCRAFT CORP.			
MONTHLY PAYROLL DATA			
DATE	NAME	SSN	WAGE
NEW HIRE DATA			
1/1	4 62 62 62		
2	1 62 62 62		
3	13 62-2 62-4 62-4		
4	HOLIDAY		
5	7.24		
6	8 64 65 65		
7	8 65-4 65 65		
8	5 65 65-4 65-4		
9	18 65-4 65-4 65-4		
10	18 65-4 65-4 65-4		
11	47 7.46 65-4 65-4		
12	3 62-4 65 65		
13	14 62-4 62-4 62-4		
14	22 64 63 64		
15	31 67 62 62		
16	65 62-4 62 62		
17	155 7.65 62-2 62-2		
18	69 67-2 72 72		
19	65 73 70-4 70-4		
20	31 70-4 70 70		
21	44 73 649 649		
22	229 8.67 61-1 61-1		
23	44 69-2 69-4 69-4		
24	52 64-4 63 63		
25	37 65 642 65		
26	32 65-6 65-5 65-5		
27	197 8.55 61-1 61-1		
28	18 62-7 62-7 62-7		
29	42 65-2 62-6 62-6		
30	67 72 66-6 66-6		
31	65 65-7 63-4 63-4		
32	50 79 65-4 65-4		
33	277 7.93 62-2 62-2		
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EXHIBIT Y

ANNEXED TO PAGE G. PHILIP J. JR.'S AFFIDAVIT

DATE	TIME	STATUS	REMARKS
11/1	10:00	ARR	11/1
11/2	10:00	ARR	11/2
11/3	10:00	ARR	11/3
11/4	10:00	ARR	11/4
11/5	10:00	ARR	11/5
11/6	10:00	ARR	11/6
11/7	10:00	ARR	11/7
11/8	10:00	ARR	11/8
11/9	10:00	ARR	11/9
11/10	10:00	ARR	11/10
11/11	10:00	ARR	11/11
11/12	10:00	ARR	11/12
11/13	10:00	ARR	11/13
11/14	10:00	ARR	11/14
11/15	10:00	ARR	11/15
11/16	10:00	ARR	11/16
11/17	10:00	ARR	11/17
11/18	10:00	ARR	11/18
11/19	10:00	ARR	11/19
11/20	10:00	ARR	11/20
11/21	10:00	ARR	11/21
11/22	10:00	ARR	11/22
11/23	10:00	ARR	11/23
11/24	10:00	ARR	11/24
11/25	10:00	ARR	11/25
11/26	10:00	ARR	11/26
11/27	10:00	ARR	11/27
11/28	10:00	ARR	11/28
11/29	10:00	ARR	11/29
11/30	10:00	ARR	11/30

DATE	TIME	STATUS	REMARKS
12/1	10:00	ARR	12/1
12/2	10:00	ARR	12/2
12/3	10:00	ARR	12/3
12/4	10:00	ARR	12/4
12/5	10:00	ARR	12/5
12/6	10:00	ARR	12/6
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12/8	10:00	ARR	12/8
12/9	10:00	ARR	12/9
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12/13	10:00	ARR	12/13
12/14	10:00	ARR	12/14
12/15	10:00	ARR	12/15
12/16	10:00	ARR	12/16
12/17	10:00	ARR	12/17
12/18	10:00	ARR	12/18
12/19	10:00	ARR	12/19
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12/23	10:00	ARR	12/23
12/24	10:00	ARR	12/24
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12/26	10:00	ARR	12/26
12/27	10:00	ARR	12/27
12/28	10:00	ARR	12/28
12/29	10:00	ARR	12/29
12/30	10:00	ARR	12/30

DATE	TIME	STATUS	REMARKS
1/1	10:00	ARR	1/1
1/2	10:00	ARR	1/2
1/3	10:00	ARR	1/3
1/4	10:00	ARR	1/4
1/5	10:00	ARR	1/5
1/6	10:00	ARR	1/6
1/7	10:00	ARR	1/7
1/8	10:00	ARR	1/8
1/9	10:00	ARR	1/9
1/10	10:00	ARR	1/10
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1/14	10:00	ARR	1/14
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1/23	10:00	ARR	1/23
1/24	10:00	ARR	1/24
1/25	10:00	ARR	1/25
1/26	10:00	ARR	1/26
1/27	10:00	ARR	1/27
1/28	10:00	ARR	1/28
1/29	10:00	ARR	1/29
1/30	10:00	ARR	1/30

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EXHIBIT F

ANNEXED TO PAUL G. PENNOYER, JR.'S AFFIDAVIT

PIPER AIRCRAFTPhiladelphia-Baltimore-Washington Exchange

<u>1969</u>	<u>Volume</u>	<u>Hi</u>	<u>Lo</u>	<u>Close</u>	<u>Change</u>
August 11	4,672	70-1/4	66	69-1/2	+3-3/4
12	619	69-1/2	68	69-1/2	-
13	3,279	73-3/4	70-1/4	73	+3-1/2
14	1,755	77	71	77	+4
15	4,148	78-1/2	76-1/2	78-1/2	+1-1/2
18	3,517	80-3/4	78-1/2	80	+1-1/2
19	1,550	80-1/2	80	80	-
20	1,174	80-3/8	80	80-3/8	+3/8
21	1,166	81	80-1/4	80-1/2	+1/8
22	782				
25	553	80-3/8	80-3/8	80-3/8	+1/8
26	772	80-1/2	80	80-1/2	+1/8
27	143	80	80	80	-1/2
28	193	77	77	77	-3
29	200	75	74	74	-3

** No Trading

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BALANCE OF EXHIBITS G TO M NOT REPRODUCED

CROSS MOTION OF DEFENDANT THE FIRST
BOSTON CORPORATION FOR SUMMARY JUDGMENT
DATED NOVEMBER 30, 1976

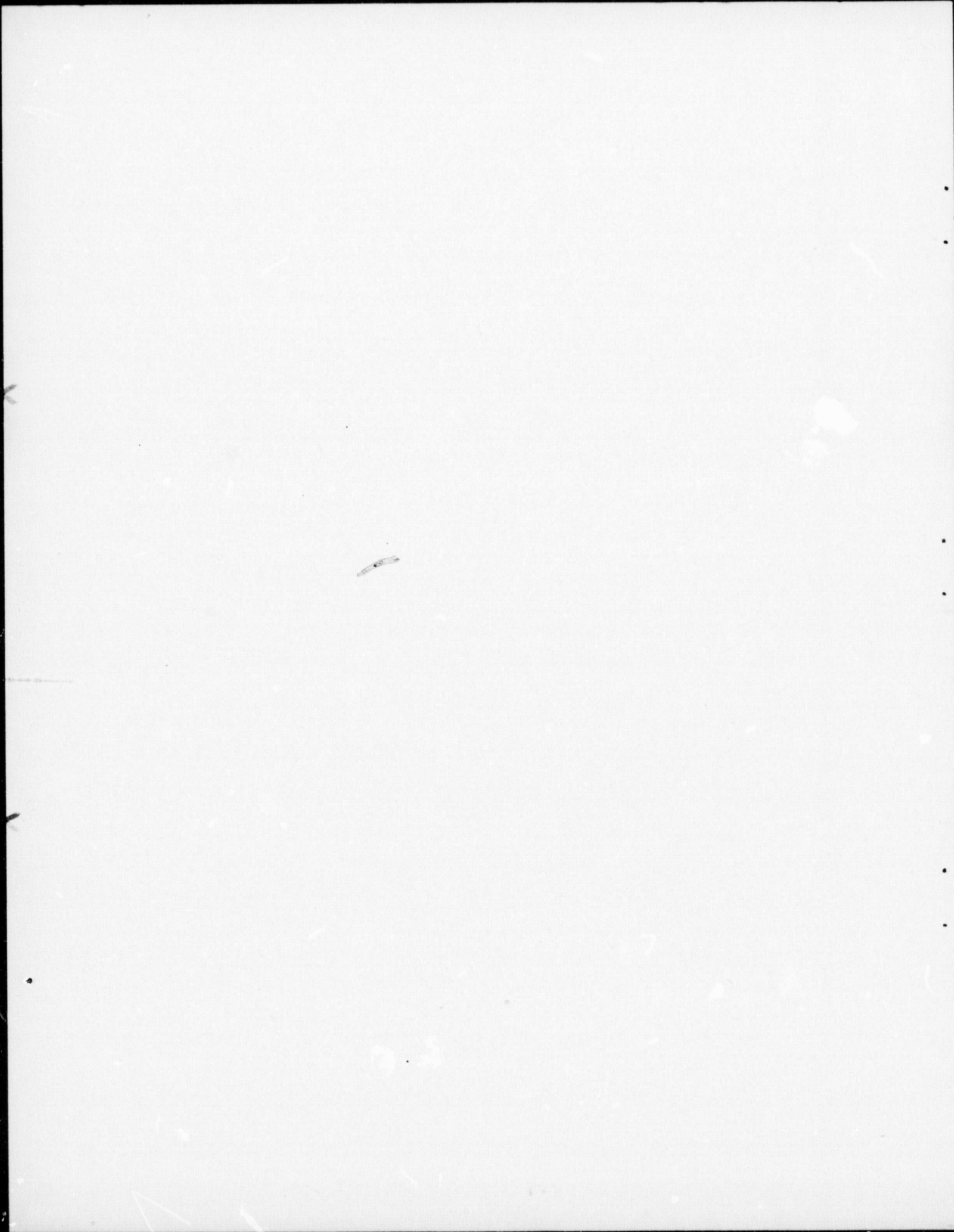
Same Title

S I R S:

PLEASE TAKE NOTICE that upon all of the pleadings herein and upon the memorandum of law of The First Boston Corporation, ("First Boston"), the undersigned will make cross-motions at the United States Court House, City of New York, New York, on the 17th day of December, 1976, or as soon thereafter as counsel can be heard, that this Court enter, pursuant to Rule 11 of the Federal Rules of Civil Procedure an order striking plaintiff's complaint, or that this Court enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in First Boston's favor dismissing the action, on the grounds that there is no genuine issue as to any material fact and that First Boston is entitled to a judgment as a matter of law and that plaintiff's claim is barred by the applicable statute of limitations and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
November 30, 1976

SULLIVAN & CROMWELL



OPPOSING AFFIDAVIT

Same Title

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

RICHARD J. STULL, being duly sworn, deposes and says:

I am the plaintiff in the above captioned action, familiar with the facts and prior proceedings herein, and submit this affidavit in opposition to defendants' motions for summary judgment, which affidavit is limited to the question of the statute of limitations, at the request of this Court. The remaining issues will be responded to as directed by the Court.

I have been informed that this Court has raised questions of my good faith in commencing this action at a time when there was a "settlement" of two actions commenced by my wife (Lillian Stull v. Pool and Lillian Stull v. Greene). I respectfully submit that this is not correct. My conduct has been open and above board and entirely in good faith.

I and my firm commenced the above two actions on behalf of my wife in 1969 arising out of the Piper-Chris-Craft-Bangor Punta tender offers. The first of the above actions was

OPPOSING AFFIDAVIT

commenced as a class action and the second, as a derivative suit.

In 1974, the first action was denied class action status by Judge Owen (63 F.R.D. 702) on the sole grounds of the relationship between my wife and me. Promptly, upon that decision, I and my firm withdrew as counsel for my wife and the firm of Milberg & Weiss were substituted as attorneys and took over both actions.

Thereafter, that firm conducted all proceedings in both of the actions and I and my firm had no further participation in any proceedings. The firm of Milberg & Weiss conducted all discussions of settlement, drafting of settlement papers and attendant proceedings in connection with the proposed settlement. I and my firm did not participate in any way, nor were we party to any such proceedings, directly or indirectly.

In fact, I expressly informed the firm of Milberg & Weiss and my wife that I would not participate in any further activity in the matter, and I would not advise my wife on the desirability or non-desirability of settling the case. I stated my objection to any settlement whatsoever, in a format which did not encompass the class.

The case was settled over my objections. The defendants sought to involve me in the settlement, continually calling me

OPPOSING AFFIDAVIT

down to discussions and requesting that I release all my claims as part of that settlement. I refused and expressly informed all concerned-including defendants' counsel that I reserved all my rights and that I planned to sue on behalf of a class. Over my objections, I was expressly invited to various conferences before Magistrate Schrieber in the Stull v. Pool and Stull v. Greene cases and I repeated my various reservations and future intentions at each such occasion.

In accordance with my expressly stated intentions, this action was commenced on August 1, 1975. The commencement occurred before Stull v. Pool and Stull v. Greene were settled. Indeed, I have been informed since the commencement of the action that settlement discussions continued after the commencement of my action. A stipulation of settlement was entered into in the Stull v. Pool and Stull v. Green matters on January 28, 1976 - approximately six months after my action was started. The stipulation was "So Ordered" by this Court on February 11, 1976. My action was already being actively litigated on both those occasions.

Thus, defendants were made fully aware of my intentions to sue and of the existence of the present suit. At no time did I play both "fast and loose" with this Court and its processes. I have always intended that the rights of the class be protected,



OPPOSING AFFIDAVIT

and the only way such rights could be protected was by the
institution of this action.

Richard L. Hall

Sworn to before me this

20th day of December, 1976.

Michael B. Young
Notary Public

WILFRED B. YOUNG
NOTARY PUBLIC, State of N.Y.
No. 41-1860331
Certificate filed in New York
JAN 20 1977

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v. *H. F. Gilligan*, 170 F.Supp. 793 (S.D.N.Y. 1958), 170 F.Supp. 217 (S.D.N.Y.1959).

In the *Flanagan* cases the plaintiff was injured on a barge being towed by a tug. In the first *Flanagan* case, 170 F.Supp. 793, the Court dismissed the complaint on the ground plaintiff did not allege he was doing any "crew work" for the tug. In the second *Flanagan* case, 170 F.Supp. 217, the plaintiff had amended his complaint to allege that he was acting as a lookout for the tug. This, the Court held, brought him within the "crew work" limits of the unseaworthiness doctrine and as such met the burden of defeating the motion to dismiss.

[3] As the plaintiff here alleges, he "was acting as a member of the crew of the EUGENIA MORAN," this would seem to be sufficient to overcome this 12(b)(6) motion. Of course, whether the plaintiff will be able to prove that allegation at trial is another question, but for the purposes of this motion we must assume it is true and so the motion to dismiss under Rule 12(b)(6) is denied.

The defendants also move for partial summary judgment as to the unseaworthiness claim on the grounds that there has been no evidence adduced in pretrial discovery or presented in opposition to this motion that shows that the plaintiff was in fact acting as a crew member of the EUGENIA MORAN. In essence, the defendants are arguing that the "handling of the barge's own lines is barge work, not tug work." (Defendants Memorandum p. 20, emphasis in original). The problem with this position is that the facts spelled out in defendants' own papers indicate that at the time plaintiff was injured on the barge he was in the process of helping a crew member of the tug cast off the barge's lines. Apparently the plaintiff's claim is that he was under the direction of the tug's crew member who was coordinating their actions with the skipper of the tug by walkie talkie. It would seem at the very least that there is some evidence that plaintiff was doing crew work for the tug. As such it is sufficient to raise an issue of fact and overcome defendants' motions for summary judgment.

Therefore the defendants' motions must be and the same hereby are denied.

SO ORDERED.



Richard J. STULL, Plaintiff,

v.

Nicholas H. BAYARD et al., Defendants.

No. 75 Civ. 3782.

United States District Court,
S. D. New York.

Jan. 7, 1977.

Stockholder brought class action against officers of corporation and others for alleged fraud in connection with competing efforts by two corporations to obtain controlling interest in corporation. On motion by plaintiff for class action determination and cross motions by defendants for summary judgment, the District Court, Wyatt, J., held that commencement of class action on May 12, 1972, by plaintiff's wife did not toll running of statute of limitations as to allegedly unlawful acts of defendants committed between January 26 and July 18, 1969, where plaintiff did not move to intervene in wife's action after class action status had been denied to that action, and plaintiff's action which was filed August 1, 1975, was barred by limitations.

Defendants' motions granted and plaintiff's motion denied.

1. Courts — 375(3)

When a federally created right of action has no accompanying statute of limitations, the local law of limitations is applicable.

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2. Limitation of Actions — 99(1), 100(1)

Under New York statutes of limitation pertaining to actions based on fraud, suit must be commenced either within six years of the time the fraud is committed, or within two years of the time the fraud is, or should have been, discovered by the plaintiff, whichever period is longer. CPLR 203(f), 213, subd. 9; Securities Exchange Act of 1934, § 14, 15 U.S.C.A. § 78n.

3. Limitation of Actions — 99(1), 105(1)

Statute of limitations as to action by stockholder for alleged fraud by defendants in connection with competing attempts by two corporations to acquire control of corporation was not tolled by commencement of class action by plaintiff's wife in 1972 where plaintiff did not move to intervene in wife's action after class action status had been denied to that action, and as the last fraudulent acts of which plaintiff complained occurred on July 18, 1969, and plaintiff's action was not filed until August 1, 1975, plaintiff's action was barred by limitations. CPLR 203(f), 213, subd. 9; Securities Exchange Act of 1934, § 14, 15 U.S.C.A. § 78n.

4. Limitation of Actions — 121(1), 124

Member of a class on whose behalf a class action has been commenced may not bring a separate, independent action after his individual claim has been time barred; his sole remedy is a timely motion to intervene in the class action after class action status has been denied; only if he does so, is the statute of limitations tolled as to him. Fed. Rules Civ. Proc. rules 23(c)(1), 24(b), (b)(2), 56, 28 U.S.C.A.

Demov, Morris, Levin & Shein, New York City, for plaintiff; Irving Bizar, New York City, of counsel.

Chadbourne, Parke, Whiteside & Wolff, New York City, for defendants Howard Piper, Thomas F. Piper and William T. Piper, Jr.; Paul G. Pennoyer, Jr., Marcia E. Carpeni, New York City, of counsel.

Webster & Sheffield, New York City, for defendant Bangor Punta Corp.; Roger L.

Waldman, Allan J. Graf, New York City, of counsel.

Sullivan & Cromwell, New York City, for defendant The First Boston Corp.; John L. Warden, Charles W. Sullivan, Philip K. Howard, New York City, of counsel.

WYATT, District Judge.

This is a motion by plaintiff for an order (a) determining that this action may be maintained as a class action (Fed.R.Civ.P. 23(c)(1)) and (b) granting partial summary judgment in favor of plaintiff (Fed.R.Civ.P. 56), determining that defendants are liable to plaintiff.

There are three cross-motions: (a) by defendant's Howard Piper, Thomas F. Piper, and William T. Piper, Jr.; (b) by defendant Bangor Punta Corporation ("Bangor"); and (c) by defendant The First Boston Corporation ("First Boston"). The cross-motions are for summary judgment in favor of the moving defendants, based on a number of grounds. Because I find that the action is barred by the statute of limitations, the other grounds asserted by movants are not reached.

1

This action (denominated in the complaint as a "class-action") was commenced on August 1, 1975, and is one of many actions arising out of the battle in 1969 between Bangor and Chris-Craft Industries, Inc. ("Chris-Craft") for control of Piper Aircraft Corporation ("Piper"). As part of their competing efforts to obtain a controlling interest in Piper, Bangor and Chris-Craft each made tender or exchange offers to stockholders of Piper. The history of the controversy may be found in the opinion of our Court of Appeals in *Chris-Craft Industries, Inc. v. Piper Aircraft Corp.*, 480 F.2d 341 (2 Cir. 1973).

Plaintiff is Richard Stull, a New York lawyer who has been active in class and derivative actions. He is, and at all relevant times has been, married to Lillian Stull. In 1969 Lillian owned 150 shares and Richard owned 75 shares of Piper. There were 1,644,890 Piper shares outstanding.

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Richard had advised Lillian to buy her Piper shares (plaintiff deposition 168-9). Neither Richard nor Lillian accepted any tender offer of either Chris-Craft or Bangor for their Piper shares.

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Chris-Craft began buying Piper shares in 1968 in the open market. On January 23, 1969, Chris-Craft made a public tender offer for 300,000 Piper shares at \$65 in cash per share.

On February 3, 1969, Lillian, represented by Richard as her attorney, commenced an action in this Court (69 Civ. 440; sometimes referred to hereafter as the "first Lillian action"). There were a number of claims against various defendants, the principal ones being asserted derivatively for the benefit of Piper. The defendants included the three members of the Piper family who are defendants in the case at bar. The gist of the complaint was that defendants had wrongfully adopted a plan to prevent Chris-Craft from securing control of Piper. Yet Lillian averred that the true value of the Piper shares was in excess of \$100 per share (and if so the defendants conferred a benefit on Lillian and other stockholders).

On May 12, 1972, Lillian, again represented by Richard as her attorney, commenced another action in this Court (72 Civ. 2055; sometimes referred to hereafter as "the second Lillian action"). In the second Lillian action, she sought to represent Piper stockholders as a class and to hold defendants liable because by false and misleading statements they induced the class not to consider the \$65 per share tender offer of Chris-Craft, which offer was a "fair price" for the Piper shares. (The inconsistency of the claims in the two actions is glaring.)

First Boston was not named as a defendant in either of the two Lillian actions.

There was much activity for several years in the two Lillian actions, with Richard acting as attorney for Lillian. By order filed December 28, 1973, Judge Carter consolidated the two Lillian actions.

Then on April 30, 1974, Judge Owen in the second Lillian action filed an order with opinion (reported at 63 F.R.D. 702) denying a motion by Lillian that the second Lillian action be maintained as a class action. Judge Owen's reason was that Lillian was not an appropriate representative of the class because (a) her husband Richard was her attorney and there was a "potential conflict of interest" which was "obvious" and (b) her sworn statements in her two actions were so "contradictory" that they made her "vulnerable to embarrassing cross-examination".

At some point after Judge Owen's decision, Richard seems to have ceased to appear in any papers or proceedings as attorney for Lillian and the firm of Milberg & Weiss appeared as her attorneys. As part of a notice of motion for reargument before Judge Owen, a consent to substitute Milberg & Weiss as attorneys in the two Lillian actions was filed on May 9, 1974. Richard and his law partner arranged for this substitution (plaintiff deposition 80); apparently Lillian had nothing to do with the selection or retainer of Milberg & Weiss.

On March 14, 1975, the two Lillian actions were, as part of a special program in this Court, transferred to me for all purposes.

After a hearing before me on April 25, 1975, of many motions, an order was filed on May 28, 1975. Among other things, this order "deconsolidated and severed" the two Lillian actions and directed "that they be tried separately". The order also recognized a change in the management of Piper, realigned Piper as a party plaintiff in the first Lillian action, permitted it to file an amended complaint in that action against members of the Piper family, and severed the claims of Lillian in that action "from the claims to be asserted" by Piper.

Thereafter, the parties began discussion of settlement of the two Lillian actions.

3

The action at bar was commenced by Richard as a class action on August 1, 1975. The claim made here by Richard is substantially the same claim in more or less the

same words as that made in the second Lillian action. First Boston was made a defendant in Richard's action; it was not a defendant in the two Lillian actions.

We are told (Memo for Piper family, 8) that before the Richard action was commenced an agreement in principle had been reached settling the two Lillian actions. This does not seem to be disputed.

What legitimate reason there could have been for Richard to commence a third action is difficult to discover. His own testimony on the subject by deposition was evasive and hard to believe. He testified that he knew of no settlement (SM 84), that he was not informed of the substance of settlement negotiations (SM 86), that he had nothing to do with it (SM 86), that after he was substituted he had nothing to do with Lillian's actions (SM 86-7), that he did not know the status of her actions (SM 86), and that he asked Lillian "to exclude me from any discussions" (SM 86). In an affidavit submitted on these motions, Richard states: "The case was settled over my objections." (Presumably this refers to both the Lillian actions.)

Richard would have us believe that his wife, on whose behalf he had brought the two actions, for whom he had acted as attorney in the two actions for several years, who had bought the Piper shares on his advice, and with whom he was living in peace and harmony, settled the two actions over his "objections" on the advice of lawyers hand picked by Richard and retained for her by him. I cannot stretch credulity so far.

If Richard really objected to a settlement by Lillian, she and her lawyers (hand picked by Richard) could readily have been persuaded to refuse the settlement. If, for some bizarre reason not now to be seen, persuasion did not succeed, Richard could have asked to intervene in the two Lillian actions. Moreover, in the derivative action (the first Lillian action) the settlement required the approval of the Court. Richard could have asked the Court to disapprove the settlement. Any of these courses would have avoided the statute of limitations

problem, which at that late date was certainly an obvious one. But Richard followed none of the logical courses. Instead, he commenced this third action. His reasoning must have been that he and Lillian would enjoy the benefits of the settlement of her actions, while preserving the chance of future benefits through prosecution of his third action.

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Despite the commencement of the Richard action, defendants went ahead to complete settlement of the two Lillian actions. This seems understandable from their point of view since it would be an advantage to them to eliminate the two Lillian actions against which the statute of limitations could not be urged, even though a third action remained but one against which the statute of limitations would be available.

The first Lillian action, being a derivative action, required Court approval of a settlement. Fed.R.Civ.P. 23.1. A stipulation of settlement was filed which referred to the fact that Piper itself had commenced, in the Court of Common Pleas for Clinton County, Pennsylvania, an action against the Piper family members. Settlement of the first Lillian action was agreed not to affect the rights of Piper in its Pennsylvania action. Neither Lillian nor Piper were to obtain anything from any defendant but Bangor agreed to pay \$1249.99 for costs and disbursements incurred by Richard's law firm and Milberg & Weiss in the action. An order was filed on February 11, 1976, directing that notice of the settlement be given by mail to all Piper stockholders and of a hearing on the settlement to be held on March 26, 1976. Such hearing was held. No stockholder—notably including Richard—opposed. The settlement was approved and the action dismissed by order filed March 26, 1976.

Since Judge Owen had denied class action status to the second Lillian action, no Court approval for the settlement of this action was required. What benefits Lillian received by way of settlement are not shown and are not required to be shown. A stipu-

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This brings us finally to the application of the statute of limitations to the third action, that by Richard.

It is averred in the complaint that the defendants made untrue statements of material facts and omitted to state other material facts which were necessary to make their statements not misleading, and that they engaged in fraudulent, deceptive, and manipulative acts and practices in violation of Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. § 78n; "the 1934 Act"). The various misleading statements and omissions occurred in several letters directed to Piper stockholders from members of the Piper family in January and June of 1969, a press release on May 8, 1969, and the registration statement of Bangor on July 18, 1969.

There is also an averment that the public announcement by the defendants in May of 1969 of Bangor's exchange offer was "illegally made and disseminated" (apparently claimed to be in violation of Section 14(d)(1) of the 1934 Act; 15 U.S.C. § 78n(d)(1)), because the announcement was made at a time when no registration statement concerning the offer had been filed with the Securities and Exchange Commission. Since plaintiff seeks relief only for damages suffered because of his failure to accept the Chris-Craft offer, and makes no claim that he bought, sold, or even considered accepting Bangor's exchange offer, this averment can only be construed as charging another misleading omission under Section 14(e) of the 1934 Act.

Finally, it is averred that the defendants "wrongfully and unlawfully negotiated and acquired" for Bangor during the pendency of Bangor's exchange offer, blocks of Piper shares at private sale. How this activity violated Sections 14(d)(1) or 14(e) of the 1934 Act is not understood, but it appears that in any event all such acquisitions by Bangor occurred between May 14 and May

23, 1969. *Chris-Craft Industries, Inc. v. Piper Aircraft Corp.*, 480 F.2d at 377.

It is thus clear that all of the allegedly unlawful acts of the defendants were averred as having been committed between January 26, 1969 and July 18, 1969.

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[1] The principle is established that when a federally created right of action has no accompanying statute of limitations, the local law of limitations is applicable. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 210, n.29, 96 S.Ct. 1375, 1389, 47 L.Ed.2d 668 (1976); *Klein v. Bower*, 421 F.2d 338, 343 (2d Cir. 1970)

[2] The relevant New York statutes are CPLR §§ 213(9) and 203(f). When read together, these statutes provide that, in actions based on fraud, suit must be commenced either within six years of the time the fraud is committed, or within two years of the time the fraud is, or should have been, discovered by the plaintiff, whichever period is longer. *Rutland House Associates v. Danoff*, 37 A.D.2d 828, 325 N.Y.S.2d 273 (1st Dept., 1971)

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It is clear that in the present case, the last fraudulent act of which plaintiff complains occurred on July 18, 1969. This action was not filed until August 1, 1975, more than six years later. The plaintiff, by his own admission, discovered the alleged violations of Section 14 of the 1934 Act by defendants no later than December 10, 1971, the date of Judge Polliack's decision in *Chris-Craft Industries, Inc. v. Piper Aircraft*, 337 F.Supp. 1128 (S.D.N.Y.). See disposition of plaintiff pp. 61-66. Clearly, the action was commenced more than two years after discovery by plaintiff of the fraud.

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[3] To avoid the conclusion just reached, plaintiff argues that commencement as a class action of the second Lillian action tolled the running of the statute of limitations, at least during the period before

Judge Owen ordered that the second Lillian action could not be maintained as a class action. This argument is based on the opinion in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974).

In *American Pipe*, the District Court denied leave to intervene under Fed.R.Civ.P. 24(b)(2) to members of a purported class after class action status had been denied to the action and after the relevant limitations period had run on the claims of the applicants to intervene; the District Court held that the statute of limitations had not been tolled by commencement of the class action on their behalf. 50 F.R.D. 99. The Court of Appeals reversed, finding that the statute had been tolled as to the applicants to intervene; it did not direct the District Court to grant their motion to intervene but remanded for an exercise of discretion under Fed.R.Civ.P. 24(b) as to their motion to intervene. 473 F.2d 580 (9 Cir. 1973). The Supreme Court then affirmed, saying (among other things):

"We hold that in this posture, at least where class action has been denied solely because of failure to demonstrate that 'the class is so numerous that joinder of all members is impracticable,' the commencement of the original class suit tolls the running of the statute for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status." (414 U.S. at 553, 94 S.Ct. at 766; emphasis supplied)

The Supreme Court went out of its way to specify that the limitations statute was tolled by a class action only as to those "purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status".

Richard is not within the *American Pipe* principle of tolling. He did not move (timely or not) to intervene in the then pending second Lillian action after class action status had been denied to that action. Richard went counter to and defied the *American Pipe* principle by commencing a separate

and independent action, thus increasing the volume of federal litigation and defeating the economy and efficiency which it was the object of the present class action Rule 23 to bring about.

[4] There is no square authority on the point, but in my view a member of a class, on whose behalf a class action has been commenced, may not bring a separate, independent action after his individual claim has been time barred. His sole remedy, under *American Pipe*, is a timely motion to intervene in the class action after class action status has been denied; only if he does so, is the statute of limitations tolled as to him.

The discussion in *American Pipe* centered on the nature and objectives of class actions. The opinion began: "This case involves an aspect of the relationship between a statute of limitations and the provisions of Fed.Rule Civ.Proc. 23 regulating class actions in the federal courts." The opinion relied on rulings under Fed.R.Civ.P. 23 as it stood before the 1966 amendments that intervention by a class member was proper even though his claim was time barred (*Escott v. Barchris Construction Corp.*, 340 F.2d 731 (2d Cir. 1965) was one of these.) The opinion stated: "Thus, the commencement of the [class] action satisfied the purpose of the limitation provision as to all those who might subsequently participate in the [class] suit as well as for the named plaintiffs" (414 U.S. at 551, 94 S.Ct. at 765; emphasis supplied). The opinion states: "... the later running of the applicable statute of limitations does not bar participation in the class action and in its ultimate judgment" (414 U.S. at 552, 94 S.Ct. at 765; emphasis supplied). There is nowhere in the opinion any suggestion that a separate independent action by a class member could be maintained. The opinion emphasized that its interpretation of the class action Rule 23 was "necessary to insure effectuation of the purposes of litigative efficiency and economy that the Rule in its present form was designed to serve" (414 U.S. at 556, 94 S.Ct. at 767). It certainly would not effectuate "litigative effi-

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ciency and economy" to permit any number of separate, independent actions by class members on time-barred claims. The separate opinion of Mr. Justice Blackmun points out that the *American Pipe* principle will not unduly encourage the assertion of stale claims because these can only be asserted through intervention either as of right or as an exercise of the Court's discretion and that the *American Pipe* decision does not "necessarily guarantee intervention for all members of the purported class" (414 U.S. at 561, 94 S.Ct. at 770; emphasis supplied).

The conclusion in the Moore treatise from a study of *American Pipe* is this: "On balance, then, it seems likely that the class member may not file an independent suit after the claim is time-barred". 3B Moore's Federal Practice 1975 Supplement p. 155.

There is a puzzling footnote 13 in the opinion of Mr. Justice Powell in *Eisen v. Carlisle*, 417 U.S. 156, at 176, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974). This might suggest a broader reading of the effect of *American Pipe* than mine.

I have examined the cases cited for Richard. They do not affect my conclusion and not all of them need be mentioned. *Hellerstein v. Mather*, 360 F.Supp. 473 (D.Col. 1973) without discussion reaches a conclusion contrary to mine but this was before the Supreme Court decided *American Pipe*. *Miller v. Central Chinchilla Group, Inc.*, 66 F.R.D. 411 (S.D.Iowa 1975) seems to read *American Pipe* as I do because in denying class action status the Court ordered notice thereof to all members of the class with further notice that they had 30 days within which to move to intervene.

The several cross-motions by defendants are granted. The motion by plaintiff is denied as moot.

Settle Order.



The AMERICAN PARTY et
al., Plaintiffs,

v.

George O. JERNIGAN, Jr., as Secretary
of State of the State of
Arkansas, Defendant.

No. LR-76-C-277.

United States District Court,
E. D. Arkansas, W. D.

Jan. 7, 1977.

Action was brought seeking declaration that Arkansas statutes relating to petition requirements and filing deadlines for establishing new political parties are unconstitutional. The District Court, Eisele, Chief Judge, held that Arkansas Statutes requiring that petition organizing new political party be signed by qualified electors equal in number to at least seven percent of total votes cast for office of governor or nominees for presidential electors at last preceding election and that petition be filed 30 days prior to date established for filing of party pledges, if any, and political practice pledges for primary elections are unconstitutional.

Order accordingly.

1. Elections ⇌ 21

Arkansas statutory provisions permitting establishment of new political parties are not necessarily an adequate substitute for provisions permitting qualification of independent candidates. Ark.Stats. §§ 3-101(a), 3-113(a, 1).

2. Statutes ⇌ 158

Repeals by implication are not favored.

3. Elections ⇌ 120

Filing deadline established in statute providing for filing of petition establishing new political party at least 30 days prior to third Tuesday of June before any general election in which political party desires to participate has been impliedly repealed by statute providing that voters wishing to establish new political party shall file peti-

OPINION

JAMES L. WYATT

WYATT, District Judge,

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There are three cross-motions: (a) by defendants Howard Piper, Thomas F. Piper, and William F. Piper, Jr.; (b) by defendant Bangor Punta Corporation ("Bangor"); and (c) by defendant The First Boston Corporation ("First Boston"). The cross-motions are for summary judgment in favor of the moving defendants, based on a number of grounds. Because I find that the action is barred by the statute of limitations, the other grounds asserted by movants are not reached.

1.

This action (denominated in the complaint as a "class-action") was commenced on August 1, 1975, and is one of many actions arising out of the battle in 1969 between Bangor and Chris-Craft Industries, Inc. ("Chris-Craft") for control of Piper Aircraft Corporation ("Piper"). As part of their competing efforts to obtain a controlling interest in Piper,

OPINION

Bangor and Chris-Craft each made tender or exchange offers to stockholders of Piper. The history of the controversy may be found in the opinion of our Court of Appeals in Chris-Craft Industries, Inc. v. Piper Aircraft Corp., 480 P.2d 341 (1973).

Plaintiff is Richard Stull, a New York lawyer who has been active in class and derivative actions. He is, and at all relevant times has been, married to Lillian Stull. In 1969 Lillian owned 150 shares and Richard owned 75 shares of Piper. There were 1,644,890 Piper shares outstanding. Richard had advised Lillian to buy her Piper shares (plaintiff deposition 166-9). Neither Richard nor Lillian accepted any tender offer of either Chris-Craft or Bangor for their Piper shares.

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Piper. The defendants included the three members of the Piper family who are defendants in the case at bar. The gist of the complaint was that defendants had wrongfully adopted a plan to prevent Chris-Craft from securing control of Piper. Yet Lillian averred that the true value of the Piper shares was in excess of \$100 per share (and if so the defendants conferred a benefit on Lillian and other stockholders).

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OPINION

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The action at bar was commenced by Richard as a class action on August 1, 1975. The claim made here by Richard is substantially the same claim in more or less the same words as that made in the second Lillian action. First Boston was made a defendant in Richard's action; it was not a defendant in the two Lillian actions.

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Since Judge Owen had denied class action status to the second Lillian action, no Court approval for the settlement of this action was required. What benefits Lillian received by way of settlement are not shown and are not required to be shown. A stipulation of dismissal of the second Lillian action was submitted, "So ordered", and filed on March 16, 1976.

OPINION

This brings us finally to the application of the statute of limitations to the third action, that by Richard.

It is averred in the complaint that the defendants made untrue statements of material facts and omitted to state other material facts which were necessary to make their statements not misleading, and that they engaged in fraudulent, deceptive, and manipulative acts and practices in violation of Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. § 78n ~~(2)~~; "the 1934 Act"). The various misleading statements and omissions occurred in several letters directed to Piper stockholders from members of the Piper family in January and June of 1969, a press release on May 3, 1969, and the registration statement of Bangor on July 15, 1969.

There is also an averment that the public announcement by the defendants in May of 1969 of Bangor's exchange offer was "illegally made and disseminated" (apparently claimed to be in violation of Section 14(d)(1) of the 1934 Act; 15 U.S.C. § 78n(d)(1)), because the announcement was made at a time when no registration statement concerning the offer had been filed with the Securities and Exchange Commission. Since plaintiff seeks relief only for damages suffered because of his failure to accept the Chris-Craft offer, and makes no claim that he bought, sold, or even considered accepting Bangor's

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exchange offer, this averment can only be construed as charging another misleading omission under Section 14(e) of the 1934 Act.

Finally, it is averred that the defendants "wrongfully and unlawfully negotiated and acquired" for Bangor during the pendency of Bangor's exchange offer, blocks of Piper shares at private sale. How this activity violated Sections 14(d) (1) or 14(e) of the 1934 Act is not understood, but it appears that in any event all such acquisitions by Bangor occurred between May 14 and May 23, 1969. Chris-Craft Industries, Inc. v. Piper Aircraft Corp., 489 F.2d at 377

It is thus clear that all of the allegedly unlawful acts of the defendants were averred as having been committed between January 26, 1969 and July 18, 1969.

6.

The principle is established that when a federally created right of action has no accompanying statute of limitations, the local law of limitations is applicable. Ernst & Ernst v. Hochfelder, ____ U.S. ____ (March 30, 1976; slip opinion, p.23, fn. 20); Klein v. Bowers, 421 F.2d 333, 343 (2d Cir. 1970)

The relevant New York statutes are CPLR §§ 213(2) and 203(2). When read together, these statutes provide that,

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in actions based on fraud, suit must be commenced either within six years of the time the fraud is committed, or within two years of the time the fraud is, or should have been, discovered by the plaintiff, whichever period is longer. Nutland House Associates v. Danoff, 37 A.D.2d 922, 325 N.Y.S.2d 273 (1st Dept., 1971)

7.

It is clear that in the present case, the last fraudulent act of which plaintiff complains occurred on July 18, 1969. This action was not filed until August 1, 1975, more than six years later. The plaintiff, by his own admission, discovered the alleged violations of Section 14 of the 1934 Act

by defendants no later than December 10, 1971, the date of Judge Pollack's decision in Chris-Craft Industries, Inc. v. Piper Aircraft, 337 F.Supp. 1123. See deposition of plaintiff pp. 61-66. Clearly, the action was commenced more than two years after discovery by plaintiff of the fraud.

8.

To avoid the conclusion just reached, plaintiff argues that commencement as a class action of the second Lillian action tolled the running of the statute of limitations, at least during the period before Judge Owen ordered that the

OPINION

second Lillian action could not be maintained as a class action. This argument is based on the opinion in American Pipe & Construction Co. v. Utah, 414 U.S. 533 (1974).

In American Pipe, the District Court denied leave to intervene under Fed. R. Civ. P. 24(b)(2) to members of a purported class after class action status had been denied to the action and after the relevant limitations period had run on the claims of the applicants to intervene; the District Court held that the statute of limitations had not been tolled by commencement of the class action on their behalf. 50 F.R.D. 99. The Court of Appeals reversed, finding that the statute had been tolled as to the applicants to intervene; it did not direct the District Court to grant their motion to intervene but remanded for an exercise of discretion under Fed. R. Civ. P. 24(b) as to their motion to intervene. 473 F.2d 536. The Supreme Court then affirmed, saying (among other things);

"We hold that in this posture, at least where class action has been denied solely because of failure to demonstrate that 'the class is so numerous that joinder of all members is impracticable,' the commencement of the original class suit tolls the running of the statute for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status." (414 at 533; emphasis supplied) L.S.

The Supreme Court went out of its way to specify

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that the limitations statute was tolled by a class action only as to those "purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status".

Richard is not within the American Pipe principle of tolling. He did not move (timely or not) to intervene in the then pending second Millian action after class action status had been denied to that action. Richard went counter to and defied the American Pipe principle by commencing a separate and independent action, thus increasing the volume of federal litigation and defeating the economy and efficiency which it was the object of the present class action Rule 23 to bring about.

There is no square authority on the point, but in my view a member of a class, on whose behalf a class action has been commenced, may not bring a separate, independent action after his individual claim has been time barred. His sole remedy, under American Pipe, is a timely motion to intervene in the class action after class action status has been denied; only if he does so, is the statute of limitations tolled as to him.

The discussion in American Pipe centered on the nature and objectives of class actions. The opinion began: "This case involves an aspect of the relationship between a statute

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of limitations and the provisions of Fed. Rule Civ. Proc. 23 regulating class actions in the federal courts." The opinion relied on rulings under Fed. R. Civ. P. 23 as it stood before the 1966 amendments that intervention by a class member was proper even though his claim was time barred (Escott v. Barchris Construction Corp., 349 F.2d 731 (2d Cir. 1965) was one of these.) The opinion stated: "Thus, the commencement of the [class] action satisfied the purpose of the limitation provision as to all those who might subsequently participate in the [class] suit as well as for the named plaintiffs" (414 U.S. at 551; emphasis supplied). The opinion states: "... the later running of the applicable statute of limitations does not bar participation in the class action and in its ultimate judgment" (414 U.S. at 552; emphasis supplied). There is nowhere in the opinion any suggestion that a separate independent action by a class member could be maintained. The opinion emphasized that its interpretation of the class action Rule 23 was "necessary to insure effectuation of the purposes of litigative efficiency and economy that the Rule in its present form was designed to serve" (414 U.S. at 556). It certainly would not effectuate "litigative efficiency and economy" to permit any number of separate, independent actions by class members on time-barred

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claims. The separate opinion of Mr. Justice Blackmun points out that the American Pipe principle will not unduly encourage

the assertion of stale claims because these can only be asserted through intervention either as of right or as an exercise of the Court's discretion and that the American Pipe decision does not "necessarily guarantee intervention for all members of the purported class" (414 U.S. at 561; emphasis supplied).

The conclusion in the Moore treatise from a study of American Pipe is this: "On balance, then, it seems likely that the class member may not file an independent suit after the claim is time-barred". 33 Moore's Federal Practice 1975 Supplement p.135

There is a puzzling footnote 13 in the opinion of Mr. Justice Powell in Eisen v. Carlisle, 417 U.S. 156, at 176 (1974). This might suggest a broader reading of the effect of American Pipe than mine.

I have examined the cases cited for Richard. They do not affect my conclusion and not all of them need be mentioned. Hellerstein v. Mather, 360 F.Supp. 473 (D. Col. 1973) without discussion reaches a conclusion contrary to mine

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has this was before the Supreme Court decided American Pipe.
[1974-1975 Transfer Binder]
Hiller v. Central Chinchilla Group, Inc., /CCM Sec. Law 2.

¶ 95,977 (S.D.Iowa 1975) seems to read American Pipe as I do
because in denying class action status the Court ordered
notice thereof to all members of the class with further
notice that they had 30 days within which to move to intervene.

The several cross-motions by defendants are
granted. The motion by plaintiff is denied as moot.

Settle Order.

Dated: New York, New York
January 7, 1977

THOMAS B. WYATT
United States District Judge

ORDER AND JUDGMENT

Same Title

Plaintiff Richard J. Stull having made a motion for (1) an order, pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring the within action a class action and (2) for partial summary judgment, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, determining that all the defendants are liable to the plaintiff;

Defendants Howard Piper, Thomas F. Piper, William T. Piper, Jr., Bangor Punta Corporation and The First Boston Corporation having opposed plaintiff's motion and having cross-moved, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, for summary judgment against the plaintiff on the grounds, among others, that plaintiff's claim was not brought within the required time limit allowed therefor, that there is no issue as to any material fact and that the moving parties are entitled to judgment as a matter of law;

Upon reading the pleadings herein, the papers submitted in support of and in opposition to said motions including (a) plaintiff's notice of motion dated August 23, 1976, the affidavits of Richard J. Stull and

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ORDER AND JUDGMENT

Irving Bizar dated August 23, 1976 and exhibits attached thereto, plaintiff's Rule 9(g) statement dated August 23, 1976 and memorandum of law in support of plaintiff's motion for a class determination and partial summary judgment, (b) defendants' papers submitted in opposition to plaintiff's aforesaid motion and in support of their cross-motions for summary judgment, including the notice of motion by the individual Piper defendants dated November 30, 1976, the affidavit of Paul G. Pennoyer, Jr. dated October 29, 1976 and exhibits attached thereto, Rule 9(g) statement dated November 30, 1976 and memorandum of law, the notice of motion by defendant The First Boston Corporation dated November 30, 1976, Rule 9(g) statement dated December 1, 1976 and memorandum of law, the notice of motion by Bangor Punta Corporation dated November 30, 1976, the affidavit of Allan J. Graf dated November 30, 1976 and exhibits attached thereto, Rule 9(g) statement dated November 30, 1976 and memorandum of law and (c) the papers submitted by plaintiff in opposition to defendants' cross-motions, including the affidavit of Richard J. Stull dated December 20, 1976 and memorandum of law, and upon consideration of the arguments made before this Court on December 17, 1976, by various counsel in support of and in opposition to

ORDER AND JUDGMENT

said motions, and upon the opinion of this Court dated January 7, 1977 it is

ORDERED that the defendants' cross-motions for summary judgment are granted and it is further

ORDERED, that plaintiff's motion for an order determining that this action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and for partial summary judgment determining that defendants are liable to plaintiff is in all respects denied as moot and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff's complaint be dismissed on the merits with prejudice and that defendants recover their costs.

Dated: New York, New York
January 18, 1977

Roger B. Wyatt
U.S.D.J.

JUDGMENT ENTERED - 1/20/77

Rapheal Z. Burgin
CLERK

A87

NOTICE OF APPEAL

Same Title

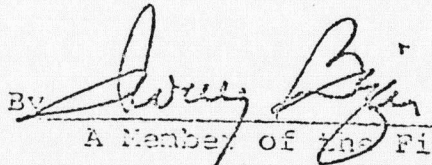
S I R S:

PLEASE TAKE NOTICE that the plaintiff herein appeals to the United States Court of Appeals for the Second Circuit, from the order and judgment of the United States District Court for the Southern District of New York (Wyatt, D. J.), dated January 18, 1977 and entered in the office of the clerk on January 19, 1977.

Dated: February 11, 1977

A. ARNOLD GERSHON

DEMOV, MORRIS, LEVIN & SHEIN

By 
A Member of the Firm

Attorneys for Plaintiff
40 West 47th Street
New York, New York 10019
(212) 757-5050

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Marjorie B. Bird, being duly sworn, deposes and says:

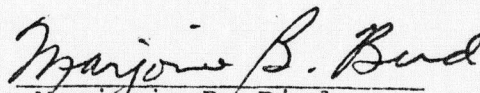
I am not a party to the action, am over the age of eighteen years, and reside at 58-15 77th Pl., Elmhurst, N.Y. 11373.

On April 8, 1977, I served two copies of Appellant's Brief and one copy of the Appendix upon each party therein named by mailing the same to said party or to his attorney at the address designated by him for that purpose, by depositing a true copy thereof in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the state, as follows:

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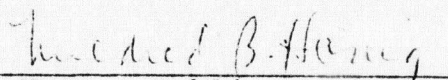
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Att.: Charles W. Sullivan, Esq.



Marjorie B. Bird

Sworn to before me this
8th day of April, 1977



Notary Public

MILDRED B. HONIG
NOTARY PUBLIC, State of New York
No. 41-1859351 Queens County
Certificate filed in New York County
Term Expires March 30, 1979